SUPREME COURT OF THE UNITED STATES.

No. 240.

THE STEAMBOAT JOSEPH JOHNSON, (OTHERWISE CALLED THE SCRANTON,) HER TACKLE, ETC., FREDERICK A. POTTS, CLAIMANT, APPELLANT,

VS.

IRWIN McCORD AND THE WASHINGTON INSURANCE COMPANY;

AND

No. 241.

IRWIN McCORD AND THE WASHINGTON INSURANCE COMPANY, APPELLANTS,

VS.

THE PROPELLER WILLIAM F. BURDEN, SILAS BETTS ET AL., CLAIMANTS.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Libel	1	1
Stipulation for libellants' costs	9	4
Consent to bonding the Wm. F. Burden	11	5
Claim of owners of propeller Wm. F. Burden	13	6
Stipulation for respondents' costs	15	7
Stipulation for value	17	8
Order to waive, &c	19	9

	Original	Print.
Stipulation to waive, &c	21	9
Claim of owner of Joseph Johnson	23	10
Stipulation for costs	25	11
Stipulation for value	27	12
Order to waive, &c	29	13
Exceptions	31	13
Notice to argue exceptions	33	14
Order	35	15
Answer of F. A. Potts	37	15
Answer	45	18
Hearing in District Court	49	20
Deposition of Irwin McCord	51	22
James C. Daniels	64	28
FrancisWeaver	66	30
George Camer	83	38
John A. Horn	97	45
Frederick F. Lockwood	102	48
Solomon H. Tisdale	104	49
Thomas Walsh	115	54
Henry Smith	148	71
Patrick Slavin	154	75
William Cavin	159	78
John Gill	181	89
Edward Morris	188	92
Benjamin Tilson	205	101
William Burnes	207	102
Capt. Walsh, (recalled)	210	104
George Arnold	216	107
George E. Warner	232	115
Benedict J. Fisher	237	118
Egbert N. Brown	247	122
Captain Arnold	254	125
Capt. Walsh, (recalled)	255	126
Jonas B. Phillips	257	126
Exhibit A	265	129
B	267	129
C	269	130
D	271	130
E	273	131
Decree and order of reference	275	131
Deposition of George H. Notter	277	132
Augustus Maxon	281	134
Francis Weaver	283	135
Frederick L. Lockwood	248	136
Exhibit A	287	137
Deposition of Edgar Haight	289	138
Notice, &c	292	139
Schedule	293	139
Commissioner's report	295	140
Exceptions to commissioner's report	297	141
Final decree	299	141
Notice of appeal	301	142

	Original.	Print.
Notice of appeal	303	143
Appeal	305	143
Bond for costs	309	145
Bond for costs	311	146
Appeal	313	148
Deposition of Luther Smith	317	149
Hearing of cause in U. S. Circuit Court	325	152
Decree	329	153
Appeal of F. A. Potts	333	154
Bond on appeal	337	156
Citation	339	157
Notice of appeal of libellants	341	158
Appeal	343	159
Bond on appeal	349	161
Citation	353	162

a UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the Circuit Court of the United States of America for the southern district of New York, in the second circuit do hereby certify that the foregoing pages, numbered from one to 356 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of Irwin McCord *et al.*, libellants, against the steamboat Joseph Johnson (sometimes called the Scranton, and the steam propeller, Wm. F. Burden, her tackle, &c., cl'm'ts and appellants, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, 21st day of Dec'r, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the said United States the ninety second.

[SEAL.] KENNETH G. WHITE, *Clerk.*

1 At a stated term of the District Court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the thirteenth day of March, in the year of our Lord one thousand eight hundred and sixty-six.

Present: The Honorable Samuel R. Betts, district judge.

IRWIN MCCORD AND THE WASHINGTON INSURANCE Company
vs.
THE STEAMBOAT JOSEPH JOHNSON (sometimes called the Scranton) and the steam propeller William F. Burden, her tackle, &c. } 18,194.

JANUARY 11TH, 1864.

The libellants file their libel in the words and figures following, to wit:

To the Honorable Samuel R. Betts, judge of the District Court of the United States for the southern district of New York:

2 The libel and complaint of Irwin McCord, (owner of the canal boat Kate McCord,) and of the Washington Insurance Company, a corporation duly incorporated by and under the laws of the State of New York, each in respect of their interest, as hereinafter mentioned, against the steamboat, Joseph Johnson, sometimes known or called the Scranton, whereof now is or late was master, her engine, tackle, apparel, and furniture, and the steam propeller William F. Burden, whereof now is, or late was master, her engine, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest in said boats, or either of them, in a cause, civil and maritime, of damage by collision, and thereupon the said libellants allege and articulately propound as follows:

First. That the said Irwin McCord, at the time of the injury and damage hereinafter alleged, was the sole owner of the said canal boat Kate McCord, her tackle, apparel, and furniture, which was then loaded with 7,000 bushels of wheat. That the libellant, the Washington Insurance Company, by virtue of a sale and assignment by certain persons doing business in the city of New York, under the firm name of G. B. & J. C. Daniels, were and are owners of the said wheat, the cargo of said boat Kate McCord, and of the claim for damage thereto hereinafter alleged.

Second. That on the ninth day of December, 1863, the said boat Kate McCord, with said cargo of wheat on board, was lying in the Atlantic basin at Brooklyn, in the harbor of New York, and
3 was taken in tow from there by said steam propeller William F. Burden, to be towed to pier 44 on the East river side of the city of New York, for the purpose of delivering her cargo on to a ship lying at that pier; that the canal was fastened to the larboard side of the said steam propeller William F. Burden, which proceeded with the canal boat in tow up and along the Brooklyn side of the East river; that when said propeller with said canal boat in tow had arrived at a point in the East river a short distance below the Fulton Ferry landing on the Brooklyn side, the said steamboat, Joseph Johnson, sometimes known or called the Scranton, was observed to be coming down the East river, and on a course inclined toward the Brooklyn shore, with two empty coal barges in tow, and then through the mismanagement, negligence, and carelessness of the persons in charge of and navigating said steamboat Joseph Johnson, sometimes known or called the Scranton, and said propeller William F. Burden, the said steamboat Joseph Johnson, sometimes known or called as the Scranton, came into said canal boat Kate McCord with great force, the bow of said steamboat Joseph Johnson, sometimes known or called the Scranton, striking the port side of the canal boat a little aft of midships at about right angles, breaking in her sides and deck, and injuring and straining her throughout, and causing her to leak badly before arriving at her destination, so as to make
4 it necessary to beach her to prevent her sinking, which was done on the Brooklyn shore above the Fulton ferry, where so much of the cargo of grain as was not wetted and damaged was taken off; that on the rising of the tide the canal boat and the balance of wheat on board, which could not be got off, was submerged.

Third. That the collision aforesaid, and the damage arising therefrom to said boat and her cargo hereafter mentioned, was caused by the mismanagement and carelessness of said steamboat and said steam propeller in not stopping and backing before said collision, or the not keeping a good lookout on said boats, or other negligence, mismanagement and fault of the persons in charge thereof.

Fourth. That the said boat Kate McCord was a new, tight, and staunch boat, and that the damage to said boat, her tackle, apparel, and furniture, by reason of said collision, and the injuries received thereby for necessary repairs and expenses to put her in the same condition as near as possible that she was in before said collision, in-

cluding the loss of use of said canal boat while repairing, amount to fifteen hundred dollars and upwards; that the cargo was of the value of ten thousand three hundred and sixty dollars, and that the damage thereto, by reason of said collision, including expenses of lightering, drying, and other expenses of saving so much of said
5 cargo as was saved, amounts to the further sum of five thousand dollars and upwards.

Fifth. That the said libellants have made application to the owners of said steamboat Joseph Johnson, sometimes known or called the Scranton, and said steam propeller William F. Burden, both of which are now lying in the port of New York, for payment of the damages aforesaid, but they decline to pay the same or any part thereof.

Sixth. That the allegations herein contained in respect to the circumstances of said collision, and the damages arising therefrom, are true upon the information and belief of these libellants, and that the premises are within the admiralty and maritime jurisdiction of this honorable court.

Wherefore the libellants pray that process, in due form of law, according to the course of courts of admiralty, and of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steamboat Joseph Johnson, sometimes known or called the Scranton, and the said steam propeller William F. Burden, their engines, tackle, apparel, and furniture, and that all persons having or pretending to have any right, title, or interest therein may be cited to appear and answer all and singular the matters so propounded, and that this honorable court would be pleased to pronounce for the damages aforesaid, and to decree such other or further relief
6 in the premises as the court is competent to give, and also to condemn said steamboat Joseph Johnson, sometimes known or called the Scranton, and said steam propeller William F. Burden, their engines, tackle, apparel, and furniture, and all persons intervening for their interest therein in costs.

IRWIN McCORD.
By JOSEPH B. ST. JOHN.
WASHINGTON INSURANCE COMPANY,
By HENRY WESTON, *Vice-President.*
C. VANSANTVOORD,
Proctor and Advocate for Libellants.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Joseph B. St. John and Henry Weston, being severally duly sworn, deposes and says, each for himself, and first, said Joseph B. St. John says that Irwin McCord, one of the libellants named in the foregoing libel, resides in Onondaga county, out of the southern district of New York, and more than one hundred miles from the city of New York, and is absent from said city; that he, said Joseph B. St. John, is the agent of said boat, Kate McCord, for the purpose of taking care of said boat and collecting the claim for damage thereto set forth in said libel; that he has heard said libel read and knows the contents thereof and that the same is true of his own knowledge, except as to the

matters therein stated on information and belief, and as to those matters he believes it to be true; and the said Henry Webster,
7 for himself, says that he is the vice-president of the Washington Insurance Company, libellants named in the foregoing libel, and that he is better acquainted with the facts set forth in said libel than any other officer of said company; that he has heard said libel read, knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief. and the allegation in respect to the ownership of said canal boat Kate McCord, which matters he believes on information to be true.

JOSEPH B. ST. JOHN.
HENRY WESTON.

Sworn to before me this 9th day of January, 1864.
[SEAL] WM. BRUERTON,
Notary Public in and for the City and County of New York.
[U. S. 5 ct. int. rev. stamp, cancelled.]

Endorsed: U. S. District Court, southern district N. Y. Irwin McCord and the Washington Insurance Company *vs.* The steamboat Joseph Johnson, sometimes known or called the Scranton, her engine, &c., and the steam propeller William F. Burden, her engine, &c. Libel, C. Vansantvoord, pr. for libellants. Filed January 11, 1864.

8

9 District Court of the United States for the southern district of New York.

Stipulation for libellant's costs, entered into pursuant to the rules and practice of this court.—Filed the eleventh day of January, 1864.

Whereas a libel was filed in this court on the eleventh day of January, in the year of our Lord one thousand eight hundred and sixty-four, by Irwin McCord and the Washington Insurance Company, against the steamboat "Joseph Johnson," sometimes known or called the Scranton, her engine, tackle, &c., and against the steam propeller "William F. Burden," her engine, tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamboat and said steam propeller may be condemned and sold to pay the demands of the libellants; and the said libellants and Jacob Brower and Wm. M. McCutchen, sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellants or their sureties, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall

be awarded against them by this court, or in case of appeal by the Appellate Court.

IRWIN McCORD,
By WM. BRUERTON, *Ag't.*
WASHINGTON INSURANCE COMPANY,
By HENRY WESTON, *V. Pres't.*
JACOB BROWER.
WM. M. McCUTCHEN.

Taken and acknowledged this 11th day of January, 1864, before me.
GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss*:

Jacob Brower and Wm. M. McCutchen, parties to the above stipulation, being duly sworn, doth each depose and say that he resides in the southern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JACOB BROWER.
WM. M. McCUTCHEN.

Sworn to this 11th day of January, 1864, before me.
GEO. F. BETTS,
U. S. Commissioner.

Recorded the eleventh day of January, 1864.
GEO. F. BETTS, *Clerk.*

10

11 U. S. District Court.

IRWIN McCORD *& al.*
vs.
THE PROPELLER WM. F. BURDEN, impleaded with the st'boat Joseph Johnson, &c.

I hereby waive the issuing of process ag't the Wm. F. Burden in this action, upon the claimants appearing and putting in a claim on the 30th January, 1864, and consent that the said Wm. F. Burden be bonded at a valuation of $7,500, Samuel W. Baker and Helmus M. Wells to be sureties in the stipulations for value and costs; claimants to answer on or before the 9th February, 1864.

1864, Jan'y 30th.

C. VANSANTVOORD,
Pr. for Libell'ts.

Endorsed: 18, 194. U. S. Dist. Court. Irwin McCord & others *vs.* The st'boat Joseph Johnson, &c. Consent to bonding of the Wm. F. Burden. C. Vansantvoord, lib'l't's pr. Filed Jan'y 30, 1864.

12

13 At a stated term of the District Court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Saturday, the thirtieth day of January, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable Sam'l R. Betts, district judge.

THE STEAM PROPELLER WILLIAM F. BURDEN, her engine, &c., *asm.* IRWIN MCCORD, &c.

And now, Silas Betts, Robert Robinson & George Arnold, intervening as owners for the interest of themselves in the said steam propeller, appears before the honorable court and makes claim to the said propeller, &c., &c., as the same are attached by the marshal, under process of this court, at the instance of Irwin McCord and others; and the said claimants aver that they were in possession of the said propeller at the time of the attachment thereof, and that the persons above named are the true and bona-fide owners of the said propeller, and that no other person is the owner thereof; and the said claimants are the true and lawful bailees thereof, as owners; wherefore, they pray to defend accordingly.

SILAS BETTS & OTHERS,
Pr. H. M. WELLS, *Agent.*
BENEDICT, BURR & BENEDICT,
Proctors for Claimants.

14 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Helmus M. Wells, being duly sworn, deposes and says that he resides in the city of New York; that he is the agent of the claimants above named, and that the owners of said propeller reside in the city of Troy, in the State of New York, and that this deponent is duly authorized to put in this claim in behalf of the owner of the said propeller, and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

H. M. WELLS.

Sworn to and subscribed this 30th day of January, A. D. 1864, before me.

GEO. F. BETTS,
U. S. Commissioner.

Endorsed: Vol. 18, 194. United States District Court for the southern district of New York. The st'b't Jose. Johnson and propeller W. F. Burden *asm.* Irwin McCord, &c. Benedict, Burr & Benedict, proctors for claimants. Claim of Silas Betts & *al.* Filed the 30 day of January, 1864.

15 District Court of the United States for the southern district of New York.

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 30th day of January, 1864.

Whereas a libel was filed in this court, on the eleventh day of January, in the year of our Lord one thousand eight hundred and sixty-four, by Irwin McCord and the Washington Insurance Company, against the steamboat Joseph Johnson and the steam propeller William F. Burden, &c., for the reasons and causes in the said libel mentioned, and praying that the said vessel may be condemned and sold to pay the demands of the libellants; and the parties hereto, hereby consenting, that in case of default or contumacy on the part of the claimants of the steam propeller William F. Burden, or sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands; and whereas, also, a claim has been filed in said cause by Silas Betts and others, claimants of the steam propeller Wm. F. Burden: Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon an appeal by the Appellate Court.

SILAS BETTS,
Per H. M. WELLS, *Ag't.*
H. M. WELLS.
S. W. BAKER.

Taken and acknowledged this 30th day of January, 1864, before me.

GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Helmer M. Wells and Samuel W. Baker, parties to the above stipulation, being duly sworn, doth depose and say, that he resides in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

H. M. WELLS.
S. W. BAKER.

Sworn to this 30th day of January, 1864, before me.

GEO. F. BETTS,
U. S. Commissioner.

Recorded the 30th day of January, 1864.

GEO. F. BETTS, *Clerk.*

16

17 District Court of the United States for the southern district of New York, in admiralty.

Stipulations entered into pursuant to the rules and practice of this court.—Filed the 30th day of Jan'y, 1864.

Whereas a libel was filed on the 11th day of January, in the year of our Lord one thousand eight hundred and sixty-four, by Irwin McCord and the Washington Insurance Company, against the propeller Wm. F. Burden, impleaded, &c., for the reasons and causes in the said libel mentioned; and whereas the process to be issued in this cause has, by consent, been waived, on the claimants executing stipulations for costs and value, the latter in the sum of $7,500, in lieu of said vessel, being in the custody of the marshal, under the process about to be issued in pursuance of the prayer of said libel, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claimants, or their sureties, execution for the above amount may issue against their goods, chattels, and lands: Now, therefore, the condition of this stipulation is such, that if the stipulators undersigned shall at any time, upon the interlocutory or final order or decree of the said District Court, or of any Appellate Court to which the above-named suit may proceed, and upon notice of such order or decree to Benedict, Burr & Benedict, esquires, proctors for the claimants of said propeller Wm. F. Burden, abide by and pay the money awarded by the final decree rendered by the court or the Appellate Court, if any appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

[L. S.] SILAS BETTS.
Pr. H. M. WELLS, *Agent.*
[L. S.] H. M. WELLS.
[L. S.] S. W. BAKER.

Taken and acknowledged this 30th day of January, 1864, before me.

GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Samuel W. Baker and Helmer M. Wells, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he resides in the city of New York, and that he is worth the sum of fifteen thousand dollars over and above all his just debts and liabilities.

H. M. WELLS.
S. W. BAKER.

Sworn to this 30th day of January, 1864, before me.

GEO. F. BETTS,
U. S. Commissioner.

Recorded this 30th day of Jan'y, 1864.

GEO. F. BETTS, *Clerk.*

18

19 At a stated term of the District Court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Saturday, the 30th day of January, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable Samuel R. Betts, district judge.

THE PROPELLER WILLIAM F. BURDEN, impleaded with the st'boat Joseph Johnson, &c., *ads.* IRWIN MCCORD & *al.* } 18, 194.

On consent to stipulate and waive service of process of attachment filed herein, and the terms being complied with, on motion of Benedict, Burr & Benedict, proctors for the claimants of the st. propeller Wm. F. Burden, it is ordered that service of process of attachment be, and the same is hereby, waived; the stipulation for value to represent said propeller Wm. F. Burden in the above action.

And it is further ordered, that the appearance of the claimants be entered.

20 Endorsed: Vol. 18, No. 194. United States District Court for the southern district of New York. The st. propeller Wm. F. Burden, &c., impleaded, &c., *ads.* Irwin McCord & *als.* Order to waive service of process and enter cl'm'ts app'ce. Benedict, Burr & Benedict, proctors for cl'm'ts. Filed the thirtieth day of January, 1864.

21 United States District Court, southern district of New York.

IRWIN MCCORD & THE WASHINGTON INSURance Company *against* THE STEAMBOAT JOSEPH JOHNSON, sometimes called the Scranton, and the steam propeller William F. Burden.

The libellants consent to waive the service of process on the said steamboat Joseph Johnson, her engine, tackle, apparel and furniture, upon the claimants executing a stipulation for costs and value, the latter in the sum of seven thousand five hundred dollars, and that Frederick A. Potts, of the city of New York, and Joseph F. Moore, be the sureties on the said stipulation, and on said claimants appearing and answering the libel on or before the second day of February, 1864.

N. Y., Jan'y 16, 1864.

C. VANSANTVOORD,
Pr. for Lib'l'ts.

I consent to appear in the within action as proctor for Frederick A. Potts, the claimant therein of the steamboat Joseph Johnson, her

tackle, &c., sometimes called the Scranton, and to file the
22 answer of said claimant on or before twenty days from this date.

Dated February 6, 1864.

F. J. FITHIAN,
Proctor for Claimant, Frederick A. Potts.

Endorsed: 18,194. U. S. District Court. Irwin McCord *& al. vs.* The steamboat Joseph Johnson, her engine, &c., impleaded with, &c. Stipulation to waive service process, and to bond and answer. Filed February 6, 1864.

23 At a stated term of the District Court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Saturday, the sixth day of February, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable Sam'l R. Betts, district judge.

THE STEAMBOAT JOSEPH JOHNSON, sometimes called the Scranton, her tackle, sued with the steamboat Wm. F. Burden, *asm.*
IRWIN MCCORD & THE WASHINGTON INSURance Company.

And now, Frederick A. Potts, owner of the steamboat Joseph Johnson, sometimes called the Scranton, intervening for the interest of himself in the said steamboat Joseph Johnson, appears before the honorable court and makes claim to the said steamboat Joseph Johnson, &c., as the same are attached by the marshal, under process of this court, at the instance of Irwin McCord and the Washington Insurance Company; and the said Frederick A. Potts avers that he was in possession of the said steamboat Joseph Johnson at the time of the attachment thereof, and that the person above named is true and bona-fide owner of the said steamboat Joseph Johnson, and that no other person is the owner thereof; wherefore he prays to defend accordingly.

F. A. POTTS.

Sworn to and subscribed this sixth day of February, A. D. 1864, before me.

JOHN A. OSBORN,
U. S. Commissioner.

F. J. FITHIAN,
Proctor for Claimant.

24 Endorsed: Vol. 18, No. 194. United States District Court for the southern district of New York. The steamboat Joseph Johnson, &c., impleaded with the Wm. F. Burden, *asm.* Irwin McCord *et al.* F. J. Fithian, proctor for claimant. Claim of owner of the J. Johnson. Filed the sixth day of Feb'y, 1864.

25 District Court of the United States for the southen district of New York.

Stipulation entered into pursuant to the rules and practice of this court.—Filed the sixth day of February, 1864.

Whereas a libel was filed in this court on the 11th day of January, in the year of our Lord one thousand eight hundred and sixty-four, by Irwin McCord and the Washington Insurance Company, against the steamboat Joseph Johnson, (sometimes called the Scranton,) her engine, &c., and another vessel, for the reasons and causes in the said libel mentioned, and praying that said steamboat may be condemned and sold to pay the demands of libellants, and the parties hereto hereby consenting that in case of default or contumacy on the part of the claimant or his surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands; and whereas, also, a claim has been filed in said cause by Frederic A. Potts:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against him by the final decree of this court, or upon an appeal by the Appellate Court.

F. A. POTTS.
JOS. T. MOORE.

Taken and acknowledged this sixth day of February, 1864, before me.

JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss*:

Joseph T. Moore and Fred'k A. Potts, parties to the above stipulation, being duly sworn, doth depose and say that he resides in the southern district of New York; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

F. A. POTTS.
JOS. T. MOORE.

Sworn to this sixth day of February, 1864, before me,
JOHN A. OSBORN,
U. S. Commissioner.

Recorded the sixth day of February, 1864.

Clerk.

26

27 District Court of the United States for the southern district of New York, in admiralty.

Stipulation entered into pursuant to the rules and practice of this court.—Filed the sixth day of February, 1864.

Whereas a libel was filed on the eleventh day of January, in the year of our Lord one thousand eight hundred and sixty-four, by Irwin McCord and the Washington Insurance Company, against the steamboat "Joseph Johnson," her engines, tackle, &c., for the reasons and causes in the said libel mentioned; and whereas service of process upon said steamboat has been waived, the claimant consenting to bond her in the sum of seven thousand five hundred dollars, in lieu of her being taken into the custody of the marshal, under the process about to be issued in pursuance of the prayer of said libel, as appears from said consent now on file in said court, and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimant or his surety, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulators undersigned shall at any time, upon the interlocutory or final order or decree of the said District Court, or of any Appellate Court to which the above-named suit may proceed, and upon notice of such order or decree to F. J. Fithian, esquire, proctor for the claimant of said steamboat, her tackle, &c., abide by and pay the money awarded by the final decree rendered by the court, or the Appellate Court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

F. A. POTTS.
JOS. T. MOORE.

Taken and acknowledged this sixth day of February, 1864, before me.

JOHN A. OSBORN,
U. S. Cammissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss*:

Frederick A. Potts and Joseph T. Moore, parties to the above stipulation, being duly sworn, each deposes and says that he resides in the southern district of New York, and that he is worth the sum of fifteen thousand dollars over and above all his just debts and liabilities.

Sworn to this sixth day of February, 1864, before me.

JOHN A. OSBORN,
U. S. Commissioner.

Recorded this 6th day of February, 1864.

28

29 At a stated term of the District Court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Saturday, the sixth day of February, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable Samuel R. Betts, district judge.

THE ST. BOAT JOSEPH JOHNSON, HER ENGINE, &c., sometimes called the Scranton, impleaded with prop'r Wm. F. Burden, *ads.* IRWIN MCCORD AND THE WASHINGTON INS'CE CO. } 18,194.

On filing consent to waive service of process of attachment against said st'boat Joseph Johnson, and the terms being complied with, on motion of F. J. Fithian, proctor for Frederick A. Potts, claimant of said st'boat, it is ordered that service of process of attachment herein be, and the same is hereby, waived, the stipulation for value to represent said st'boat in the above action.

And it is further ordered that the appearance of the claimant be entered.

30 Endorsed: Vol. 18, No. 194. United States District Court for the southern district of New York. The st'boat Joseph Johnson, &c., impleaded, &c., *ads.* Irwin McCord and others. Order to waive service of process and enter cl't's app'ce. F. J. Fithian proctor for cl'm't, F. A. Potts. Filed sixth day of Feruary, 1864.

31 U. S. District Court.

THE PROPELLER WM. F. BURDEN, IMPLEADED, &c., *ads.* IRWIN MCCORD.

The claimants of the propeller Wm. F. Burden except to the libel herein on the following grounds:

First. That the libel does not state with sufficient distinctness the circumstances attending the said collision, nor whether it happened by day or by night, nor whether it happened by reason of the propeller or the steamboat, or either of them, keeping in or avoiding any particular direction which they ought not to have kept in or ought not to have avoided.

Second. That the libel does not state or fix upon the particular fault of each of the vessels libelled in this action, which contributed to the collision; nor does it point out what was the particular part which each bore in said collision.

That it does not state fully the facts and circumstances attending the said collision; that it does not state what was the hour, or the state of the tide or the wind, or the direction or speed of either the propeller or the steamboat, or what was done on board of either of them.

That it joins, as libellants in this cause, the owner of the boat
32 and the alleged owners of the [of the] cargo, who cannot be joined as libellants, but should sue separately.

That it does not allege that the Washington Insurance Company were owners of the cargo of said boat at the time of said collision.

That the said Washington Insurance Company are stated to be the assignees of the claim for damage, when such claim cannot be sued upon in admiralty.

Wherefore the claimants pray that the libel herein may be dismissed, with cost.

BENEDICT, BURR & BENEDICT,
Proct's for Claim'ts of the Wm. F. Burden.

Endorsed: 18, 194. U. S. Dist. Court. The propeller Wm. F. Burden, impleaded, &c., *ads.* Irwin McCord *et al.* Exceptions. Benedict, Burr & Benedict, proct's for cl'm'ts, 74 Wall st., N. Y. Filed March 17, 1864.

33 District Court of the United States of America, southern dis- of New York.

IRWIN MCCORD *& al.*
vs.
THE STEAMBOAT JOSEPH JOHNSON, &c., AND the propeller William F. Burden.

Take notice, that the exceptions of the claimants of the William F. Burden to take libel in above cause will be brought on for hearing at the next term of the District Court of the United States of America for the southern district of New York, to be held at the court-room of said court, in the city of New York, in said southern district of New York, before the judge of the same court, on the first Tuesday of April next, at eleven o'clock in the forenoon of that day; and that a motion will then and there be made that said exceptions be stricken out as irregular, in not being filed within the time required by the rule in that behalf, and before time taken to answer, and being otherwise not in conformity with the rules, and for a default and reference to a commissioner to assess the damages of the libellants.

Dated N. Y., March 31, 1864.

Yours, &c.,

C. VANSANTVOORD,
P'r for Libell'ts, 1 Hanover st.

To Benedict, Burr & Benedict, esqs., proctors for the cl'm'ts of the Wm. F. Burden.

34 Endorsed: 18, 194. U. S. District Court. Irwin McCord *& al. vs.* The Joseph Johnson and Wm. F. Burden. Notice arg't to exceptions, April term, 1864. C. Vansantvoord, lib'l'ts' pr's.

We admit due service of notice of which within is a copy.
N. Y. April 1, 1864.

BENEDICT, BURR & BENEDICT,
Proct's.

Filed April 12, 1864.

35 At a stated term of the District Court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the sixth day of June, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable Samuel R. Betts, district judge.

THE PROPELLER WILLIAM F. BURDEN, IMPL'D, &c., *ads.* IRWIN MCCORD *& al.* } 18,194.

This case having been heard on exceptions to the libel filed in this action and argued by the advocates of the respective parties, and due deliberations being had in the premises, it is now ordered, adjudged, and decreed by the court that said exceptions be, and the same are hereby, overruled without costs, and that the claimants have ten days' time to answer after the entry and service of this order on the libellants' proctor.

Let the above order be entered in this cause.

SAM. R. BETTS.

All right.

C. V. S.,
Proctor for Libellants.

The above order substituted for order entered and filed May 27th, 1864, by mandate of district judge. (See endorsement.)

36 Endorsed: Vol. 18, No. 194. United States District Court for the southern district of New York. The propeller Wm. F. Burden, impleaded, &c., *ads.* Irwin McCord *& al.* Benedict, Burr & Benedict, proctor for cl'm'ts. Order. Filed 6th day of June, 1864.

Let the within order be substituted for the order entered and filed May 27th, 1864.
N. Y. June 6, 1864.

SAM. R. BETTS.

37 To the Honorable Samuel R. Betts, judge of the District Court of the United States for the southern district of New York:

The answer of Frederick A. Potts, the owner of the steamboat Joseph Johnson, sometimes called the "Scranton," to the libel and complaint of Irwin McCord and the Washington Insurance Company, shows and alleges as follows:

First. By way of objection and exception to said libel he says said

libel and complaint ought not to be sustained by the court, because he says there is two separate, not joint, causes of action and complaint in said libel, set forth in favor of separate persons, and that the said libellants and complainants are improperly united in one and the same libel.

Second. That it is not shown in said libel in what respects or particulars the said steamboat Joseph Johnson was in fault in the premises, or that she was in fault at all.

Third. That it does not appear by the said libel that those in charge of the said steamboat Joseph Johnson were guilty of any fault or negligence whatever in respect to the collision therein charged.

Fourth. That the said libel does not set forth or allege any joint or common fault on the part of the said propeller William F. Burden and said steamboat Joseph Johnson, whereby said collision and injury was caused.

38 Fifth. In case, however, the honorable court should be of opinion said above objections and exceptions are not well taken, said Frederick A. Potts, this answering defendant, further says, to the first article of said libel he has no knowledge or information respecting the matters therein stated, and he leaves the said libellants to make such proof in respect thereto as they shall be advised.

Sixth. That to the second article in said libel he says he admits the allegations in the first one or two paragraphs in said article contained, to and including the statement in said article of the said steamboat Joseph Johnson, or Scranton, being observed coming down in the East river with two empty barges in tow. That as to the remainder or residue of the allegations in said second article of said libel contained, this claimant alleges they are in great part untrue, and he denies the same, and alleges the facts to be as follows:

That on the 9th day of December, A. D. 1863, and about the middle of the day, the said steamboat Joseph Johnson, called the "Scranton," was proceeding slowly down the East river from a point above Fulton ferry dock, in Brooklyn, and having in tow a barge on each side of said steamboat, to and heading for a landing, and intending to land, at a place just below said Fulton ferry dock, in Brooklyn, aforesaid; and that the said steamboat or steam propeller William F. Burden was then and there proceeding and head-

39 ing in a northerly direction up the East river aforesaid, at great speed, having in tow, alongside of the said propeller, and on the larboard side, a canal boat, the said boat Kate McCord.

That at that time it was ebb-tide, flowing down towards New York bay. That this claimant is unable to state the direction of the wind.

That when the person and persons in charge of the said steamboat "Scranton" first saw the said steam propeller William F. Burden, the Scranton was close in to the Brooklyn shore, and headed down the river, and just opposite the dock known as Marston & Powers' dock, a short distance up the river from the Fulton ferry dock, but the precise distance this claimant is unable to state. That the said

steamboat William F. Burden was at that time also close in to the Brooklyn shore, heading and going northerly up the river, under full steam, and at a point some distance below the point at which said steamer "Scranton" was intending to land. That said steamer Scranton, when just opposite the Fulton ferry dock, slowed her engine and changed her course, so as to head directly in toward the Brooklyn shore, at the point where she intended to land, and at the same time blew her steam-whistle twice, and loudly, thereby indicating and declaring to those in charge of the steamer "Burden" that it was the wish and intention of those in charge of the "Scranton" that the two vessels should pass each other to the left,
40 and on the starboard of each, instead of to the right and larboard. That the said steamboat William F. Burden did not answer the said signal and whistle, as it was her duty to do, and did not change her course to the left and larboard and out river side, as it was her duty to do, but, on the contrary, carelessly, wrongfully, and negligently, put her helm to port, and carelessly and wrongfully persisted in a dangerous and wrongful attempt to pass to the right, inside and across the bows of the said steamer Scranton, and that the said steamboat William F. Burden was then and there so carelessly, negligently and unskilfully managed, and directed and handled, by those in charge of her, said steamer "Burden," that in thus carelessly, wrongfully and negligently attempting and persisting in passing inside and across the bows of the said steamer Scranton, and larboard bow and side of the said canal boat Kate McCord, so being in tow on the larboard side of said steamer William F. Burden, was by and through the mismanagement, carelessness and negligence in those having charge of said steamer Burden and said canal boat Kate McCord, as aforesaid, and hereafter said, ran into and against the bow and stern piece of said steamboat "Scranton," then and there and thereby knocking off the stem piece of said steamboat "Scranton," and greatly damaging and injuring the timber, planks, and tackle in and about the said steamer Scranton, damaging and injuring the said steamer Scranton to the amount of three
41 hundred dollars, and also rendering it necessary for said steamboat "Scranton" to be laid up for repairs for a long space of time, to wit, fourteen days, whereby damages accrued to the claimant for the loss of the services of the said steamboat to the amount of one thousand dollars.

That at the time and place of the said collision, and before the said collision, and when the pilot and those in charge of said steamer "Scranton" saw there was danger of a collision in consequence of the said negligence and misconduct of those in charge of said steamboat Burden and said canal boat Kate McCord, in persisting in passing inside and to the right, the engine of the said Scranton was immediately reversed and backed, and sternway was got upon said "Scranton," and she was under stern way, backing out into the river, when said collision occurred.

That on the contrary, those in charge of said steamboat "Burden" did not stop or slack the speed of said steamer "Burden," or slow

her engine, or blow whistles, or make signals, or take any care or precaution to prevent or avoid said collision. That as this claimant is also informed and believes, said steamboat William F. Burden was not properly or well manned or found, and had not at the time aforesaid any proper or skillful pilot, steersman, engineer, or look-out, and was, in the particulars hereinbefore stated, and in many others, which this claimant will prove upon the trial, or hearing of this libel, so negligently then and there manned, found and handled, that
42 said collision was wholly the fault of those in the charge of said steamboat William F. Burden, and of the said canal boat Kate McCord.

That this claimant has no knowledge or information, except from said libel, as to whether any or what injury or damage was sustained by the said canal boat Kate McCord, or her cargo, by reason of her so colliding with the said steamboat of this claimant, and he leaves the said libellants to make such proof on that subject as they shall be advised.

Seventh. As to the third article of the said libel, this claimant denies the matters therein stated, so far as the same relates to the said steamboat Joseph Johnson, and those in charge of her.

Eighth. To the fourth article of said libel this claimant says that he has no knowledge or information in respect to the matters in said article stated, and he therefore denies the same.

Ninth. To the fifth article of said libel he says the same is true.

Tenth. To the sixth article of said libel he says that all and singular the premises and allegations herein are true, and in the said libel are not true, except as herein admitted.

Wherefore this claimant prays that said libel may be dis-
43 missed with costs as to him and said steamboat Joseph Johnson.

F. A. POTTS.

Sworn to before me this 10th day of June, A. D. 1864.

ROBERT OWEN,
Notary Public, New York.

[U. S. 5 cent int. rev. stamp, cancelled.]

Endorsed: 18,194. U. S. District Court. Irwin McCord and others *vs.* The steamboat Joseph Johnson, and Frederick A. Potts, claimant, and others. Answer of F. A. Potts. J. J. Fithian, proctor for claimant. Filed June 17th, 1864.

44

45 To the Honorable Samuel R. Betts, judge of the District Court of the United States for the southern district of New York:

The answer of Silas Betts and Robert Robinson, owners of the propeller William F. Burden, impleaded with the steamboat Joseph Johnson, to the libel and complaint of Irwin McCord and the Washington Insurance Company, alleges as follows:

First. The claimants above named saving and reserving to them-

selves all exceptions to said libel by reason of its manifold insufficiences, allege that they have no knowledge whether the said Irwin McCord was sole owner of the canal boat Kate McCord, or whether said canal boat was loaded with seven thousand bushels of wheat, or whether the Washington Insurance Co., by virtue of any sale and assignment from any person whatever, were or are owners of the said wheat or of any claim for damages thereto.

Second. That they admit that the said canal boat was taken in tow by the William F. Burden, as alleged by the libel, and that she was fastened to the larboard side of the propeller which proceeded with her in tow up the East river.

That as to the circumstances of the collision they have no personal knowledge, but from their information and belief, they allege that the following were the circumstances thereof, viz: That when
46 the said propeller and her tow were a short distance below the Fulton ferry, the steamboat Joseph Johnson was coming down the river with the tide, and was headed towards the Brooklyn side of the river; that the said steamboat blew her whistle once and the propeller answered her by the same signal, and that instead of stopping, or turning to the right, or going under the stern of the said propeller and her tow, as under the circumstances she should have done, the said steamer Scranton attempted to pass across the bows of the propeller, in spite of hails and signals and without slacking her speed, carelessly and negligently, and in violation of her duty under the circumstances, ran against the canal boat, striking her in the larboard side and doing her injury.

And the claimants deny each and every allegation of the libel as to said collision which is inconsistent with the above, and as to the beaching of the boat and loss of the wheat, they have no personal knowledge and leave the libellants to prove the same.

Third. And these claimants deny that said collision or damage was caused by any mismanagement whatever on the part of said propeller, or that the mismanagement alleged in the third article of the libel occured on her.

Fourth. And as to the allegations of the fourth article of
47 the libel they have no knowledge, and leave the libellants to their proof thereof.

Wherefore they pray that the libel may be dismissed as against said propeller with costs.

BENEDICT, BURR & BENEDICT,
Proctors for "Wm. F. Burden."
E. C. BENEDICT, *Advocate.*

CITY AND COUNTY OF NEW YORK, *ss.*

Robert D. Benedict, of said city, one of the claimants' proctors herein, being duly sworn, deposes and says, that Silas Betts and Robert Robinson, the claimants in the foregoing answer named, reside at West Troy, out of the southern district of New York; that he has read the foregoing answer and knows the contents thereof, and that the same is true to his own knowledge, except as to the mat-

ters therein stated on information and belief, and as to these matters he believes it to be true.

R. D. BENEDICT.

Sworn to before me the 17th June, 1864.

CHAS. W. NEWTON, *U. S. Com.*

Endorsed: 18,194. U. S. District Court. The propeller William F. Burden, impl'd with st'b't Joseph Johnson, *ads.* Irwin McCord. Answer. Benedict, Burr & Benedict, libell'ts proctors, 74 Wall st., N. Y. Filed June 18, 1864.

48

49 At a stated term of the Circuit Court of the United States of America for the southern district of New York, held at the United States court-room, in the city of New York, on Thursday, the 13th day of April, in the year of our Lord one thousand eight hundred and sixty-five. Present: The Honorable Samuel R. Betts, district judge.

IRWIN MCCORD AND OTHERS
vs.
THE ST'BOAT JOSEPH JOHNSON & [and] propeller Wm. F. Burden, &c. } 18,194.

FREDERICK A. POTTS
vs.
THE ST'BOAT Wm. F. BURDEN. } 18,167.

These causes coming on in their order on the calendar, ordered that they be heard together. Pleadings read.

Evidence for libellants in 1st cause.

Irwin McCord, sworn.
James E. Danniels, "
Exhibits A and B, bills to ins'ce co., read.
Exhibit C, (receipt.) "
Francis Weaver, sworn.
Causes adj'd.
April 14, causes adj'd, being good Friday.
April 18, causes adj'd, resumed.

Evidence for libellants in 1st cause.

George Camer, sworn.
John A. Horn, "
Bill, Exhibit D, read.
Fredrick F. Lockwood, sworn.
Bill, Exhibit E, read.
Cornelius Van Santvoord, sworn.

Evidence for libellants in 2d cause, and for cla'm'ts of J. Johnson in 1st cause.

50 Deposition of Jonas B. Phillips, read.

Evidence for the "Wm. F. Burden" in both cases.

Solomon H. Tisdale, sworn.
Causes adj'd, hearing to be cont'd in May term.
May 2d, causes resumed.

Evidence for lib'l't in 2d suit.

Thomas Walsh, sworn.
Henry Smith, "
Patrick Slaven, "

Evidence for the "Wm. F. Burden."

William Cavan, sworn.
Causes adj'd.
May 3d, causes resumed.

Evidence for cl'm'ts of "Wm. F. Burden."

Willian Cavan, resumed.

Evidence for libel't in 2d cause.

John Gill, sworn.
Edward Morris, sworn.
Benjamin Tillson, "
William Burns, "
Thomas Walsh, recalled.

Evidence for cl'm'ts, "Wm. F. Burden."

George Arnold.
George E. Warner.
Benedict J. Fisher.
Causes adj'd.
May 4, causes resumed.

Evidence for "Wm. F. Burden."

Egbert N: Brown, sworn.
George Arnold, recalled.

Evidence for lib't, 2d cause.

Thomas Walsh, recalled.

Causes to be argued at a future day and 30 days' time allowed to put in further testimony, to be taken out of court by consent of parties.

51 United States District Court, Hon. Judge Betts, presiding.

APRIL 13, 1865.

IRWIN MCCORD *et als.*
vs.
THE ST'R'T JOSEPH JOHNSON, (ALSO CALLED THE Scranton,) and the propeller Wm. F. Burden.

FREDERICK A. POTTS
vs.
THE WM. F. BURDEN.

For libellants, C. Vansantvoord; for the Joseph Johnson, F. J. Fithian and ex-Judge Marion; for the Wm. H. Burden, Robert Benedict & E. C. Benedict; for Fred'k A. Potts, F. J. Fithian.

52 (It is agreed that the testimony taken in the one case shall be used the same as if the witnesses were sworn in both cases.)

Mr. Van Santvoord read the libel; Mr. Robert Benedict read the answer for the claimants of the Wm. F. Burden; Mr. Fithian read the answer for the claimants of the Joseph Johnson.

Irwin McCord, one of the libellants, being duly sworn, testified:

Q. Were you owner of the boat Kate McCord in Dec'r, '63?
A. Yes, sir.
Q. Before and at the time of this collision?
A. Yes, sir; I had her built.
Q. And you are the owner still?
A. Yes, sir.
Q. When was she built?
A. In 1862.
Q. What time in 1862?
A. She was launched in the middle of Sept., '62.
Q. Where was she built?
A. At Black Rock, Buffalo.
Q. What was her condition at the time of this collision?
A. She was in tiptop condition.
Q. How as to tightness and staunchness in Dec., 1863?
A. She was both tight and staunch, as far as I know.

53 Q. How was she as to strength? State how she was built; what you know of her size and thickness of timbers.

A. She was built 4-inch pine sides, a little upwards of 4 inches, with streaks of oak running through her of 5 inches thick; her sides were drift-bolted, and then set to a frame of oak 4 inches by 6½; this frame was 12 inches apart, that is 12-inch spaces between the uprights; then she was sealed and clamped inside of that with 2¼-inch pine, well stayed and fastened.

Q. The upper streak outside; what was the thickness?
A. 5 by 12 inches, oak.
Q. What on the inside?

A. 2½ by 12, oak.
Q. What do you call that class of boats, then, as to her sides?
A. We generally call them a double-side boat.
Q. What was her draft when loaded?
A. Five feet nine inches.
Q. And when light?
A. About 12 inches.
Q. You were not on board at the time of the collision?
A. I was not.
Q. When did you see her afterwards?
A. The 10th of December, about 3½ o'clock in the afternoon.
Q. Where was she lying then?
A. Lying in the slip above Fulton ferry, lying in the mud.
Q. The day after the collision?
54 A. Yes, sir.
Q. On the Brooklyn side of the river?
A. Yes, sir.
Q. How as to the cargo at the time?
A. They had then about half of the cargo out, I should judge; they had a boat alongside of her, and were taking out wet wheat and putting it on the deck of a lighter.
Q. Were they working the pumps at that time?
A. Yes, sir; they were.
Q. How many?
A. I think they had 8 pumps in operation.
Q. Where were they?
A. I think there were 3 forward and 3 aft and two amidships.
Q. At that time did you see the wound in the boat?
A. I could not, except at the top of the side.
Q. They had a piece of canvass at that time over her side?
A. They had a piece of canvass over the rent, and that was boarded over.
Q. Then there was filling in at this time you saw her?
A. There had been filling in between the lining and the outside.
Q. Did you see the wound there when the canvass was taken off?
A. Yes, sir.
Q. Describe it.
55 A. She was cut perpendicularly from the top down about 5½ feet, I should judge; I did not measure it; the side was broken in and lapped, or one side shored by on another.
Q. She was broken about 5½ feet, according to your judgment?
A. Yes; she was broken about 5½ feet.
Q. Was that below her loaded line?
A. Yes, sir; below her loaded line.
Q. In what part of the boat?
A. About midships, about 2 feet aft of the centre.
Q. Was this cut down to her line when light?
A. No, sir.
Q. How near was she cut down to her water line when light?
A. Within 2½ or 3 feet.

Q. What was the condition of her uprights and sides?

A. Well, the side that she was broken on was driven in, concaved, and her uprights were turned right in, of course.

Q. The uprights turned in, and the whole side bent in?

A. Yes, sir; and the opposite side was bent out the same; she stood one side in and the other out.

Q. One side convex and one concave?

A. Yes, sir.

Q. How much out of line?

A. About 7 inches.

Q. The side that was bent in, was that her port or starboard side?

A. It was the left side.

Q. And the starboard side was bent out?

A. Yes, sir.

56 Q. About 7 inches out of line?

A. Yes, sir.

Q. Do you mean the same side of the boat?

A. No, both sides; one side was shoved in and the other shoved out.

Q. You say the whole left or port side; what proportion of her length was bent in?

A. She was bent from each end; she was started from each end, drove right in.

Q. How long was she?

A. Between 95 and 96 feet.

Q. How about the deck and the frame?

A. There was some of the deck timbers broken, some of the frames; two or three of them outright.

Q. The other frames were started?

A. The frames were all started; everything was started about the boat.

Q. Any deck plank broken?

A. Yes, sir.

Q. How about the rail, was that broken?

A. Yes, sir.

Q. Where was she taken to after the wheat was taken out?

A. She was taken into Erie basin, Brooklyn, and beached.

Q. What was done there?

A. She was caulked, so as to keep her afloat while light.

Q. And then where was she taken to after that, and where repaired?

57 A. She was taken in the spring to Buffalo and repaired there.

Q. By whom?

A. By Messrs Van Slick & Otto.

Q. Why was she taken to Buffalo to be repaired?

A. To save money, I suppose. It could be done cheaper there than here.

Q. Do you know the fact whether materials and labor are cheaper there than here?

A. They are.
Q. Was the cargo laden in bulk?
A. It was in bulk.
Q. The amount of repairs appears by the bills?
A. Yes, sir.
(Page 9.) Q. Was there any loss by the use of the by reason of the damage?
A. We lost one trip by her, the trip calculated to be the best trip of the season.
Q. From Buffalo here?
A. Yes, sir; in the spring of the year while repairing her; and we lost the use of her all that winter besides.
Q. Had you run on the canal with her?
A. No, sir.
Q. How many days does a trip take?
A. 30 days on an average.
Q. At what would be a fair price for the charter of a boat of that kind?
A. 15 to 20 dollars a day at that time of the year.
Q. What does the 30 days include?
58 A. That includes the whole trip, loading and unloading, upon the average, sometimes it takes longer, and sometimes not so long.
Q. Why could you not have had her repaired here, and saved that loss of the trip in spring?
A. We thought it would cost more than the difference of loss of time.
Q. What do you know as to the loss of some furniture on board of her?
A. The furniture was wet and broken and used up; the bedding was used for stopping the breach and saving the cargo; it was ordinary furniture.
Q. Do you know where this boat was loaded before she came to New York?
A. She was loaded at the Main Street elevator, Buffalo.
Q. What was the load?
A. 7,000 bushels of wheat.
Q. You attended to the loading of her in Buffalo?
A. Yes, sir; that is, I gave the order for her load.
Q. You saw her loaded from the Main Street elevator, Buffalo?
A. Yes, sir.
Q. This is the bill for the furniture that was lost?
A. Yes, sir; that is a bill of my making.
Q. Is that a correct bill of furniture lost?
A. Yes, sir. (Marked Ex. A.)

Cross-examined by Mr. Benedict.

Q. You suppose this to be the side of the boat. Do I under-
59 stand you to say that the parts were separated?

A. Yes, sir.

Q. Striking, the bow of the steamboat came against the side of the canal boat, so that she was cut open 4 or 5 feet?

A. Yes, sir.

Q. About how wide a gash?

A. About 3 inches at the top, and it would close up as it went down.

Q. Had you come down from Buffalo after the accident?

A. No, sir; I came down from Syracuse. I got a telegram saying the boat was sunk, and I came right down that evening; she was still sunk.

Q. Had anything been done to get her up?

A. I should judge they had half the cargo out when I got there.

Q. You do not know anything of how they got her up, of your own knowledge?

A. No, sir.

Q. You say, here, (referring to bill,) "for pumping and care, $35."

A. Yes, sir; that was done after the cargo was taken out.

Q. Is that an exact charge?

A. That is an exact charge for that thing.

Q. How many men pumped?

A. We had 2 men on the boat.

Q. They were left pumping all the time?

60 A. I kept two men over night until next day, when she was beached; that was after they got the cargo off of her.

Q. This charge is for what was done on her down here?

A. Yes, sir.

Q. You had to keep 2 men on board to pump her clear and look out for her.

A. Yes, sir.

Q. What did you pay them a day?

A. I paid the two men $10; then I paid $25 for the men who watched her and did the corking.

Q. That includes the beaching and corking.

A. Yes, sir.

Q. This bill is only for pumping and care?

A. It should be for pumping and beaching.

Q. What do you know about the bedding?

A. I suppose it was all used up in the breach. The quilts and mattrasses were all wet.

Q. How many beds had you?

A. Four beds.

Q. What kind mattrasses?

A. They were straw; that is an estimated loss on the furniture.

Q. The furniture was not a total loss, it was injured?

A. Some was lost and all of it was injured.

Q. And this 40 dollars you consider an estimate of the damage on the appointments of the four bunks?

A. Yes, sir.

Q. Did you have to hire pumps?

61 A. They were broken pumps which we borrowed, and we had to replace them.

Q. This charge of 8 and ½ dollars for pumps is for pumps that you borrowed and broke and had to replace.

A. Yes, sir.

Q. How many pumps had you?

A. Nine on the boat. I think they were not all broken—not all borrowed.

Q. Is that an estimated charge, too?

A. Yes, sir.

Q. You do not know what you actually paid?

A. No, sir.

Q. So with the bedding?

A. Yes, sir.

Q. "Lines, poles, and cabin fixtures, $28;" I suppose that is an estimated charge?

A. Yes, sir; all estimated charges, except the pumping.

Q. Are not the lines, poles, and cabin fixtures all there still?

A. No, sir; I could not tell what became of them. I came here and did not find the furniture on the boat, and I made a bill against the insurance co., and they paid it.

Q. What insurance co.?

A. The Lamar Ins. Co.

Q. Was the boat insured in that co.?

A. Yes, sir.

Re-direct.

Q. And that co. paid this bill?

A. They have paid part of it.

62 Q. How much of it?

A. Seventy-six dollars, I think; I will not be positive; they cut it down some.

Q. The Lamar Insurance Company, which had an insurance on the boat, paid seventy-six dollars on this bill?

A. Yes, sir; they cut it down.

Re-cross.

Q. Why did they not pay the whole bill?

A. They thought that part of the bill should be paid by the Washington Insurance Co., as the bedding, &c., was used up to save the cargo.

Q. Your idea is that they did not dispute the fairness of the whole bill, but thought that they should not pay more than seventy-six dollars?

A. Yes, sir.

Q. And they thought the Washington Ins. Co. ought to pay the rest.

A. Yes, sir.

Q. Did they pay the rest?

A. They did not, sir.

Cross-examined.

By Judge Marvin:

Q. This boat, the Kate McCord, was insured by the Lamar Insurance Co?

A. Yes, sir.

Q. Where does that co. do business?

A. In Buffalo. The boat was insured in Buffalo.

Q. Has that co. paid you the whole loss?

A. No, sir.

Q. What part of it has the company paid of the damage done to the Kate McCord?

63 A. They paid their proportion of the risk to the valuation.

Q. And how much did they pay you?

A. Eleven hundred and seventy-six dollars, I think, on damage to the boat.

Q. What value did you insure for?

A. She was insured for $2,000.

Q. That was for the boat and not for the cargo?

A. Yes, sir.

Q. At what was she valued?

A. She was insured for $2,000, and valued at $2,400.

Q. And they paid you $1,176 on the boat?

A. I think about that; they paid their proportion.

Q. And $76 on the bill?

A. Yes, sir.

Q. Were you the owner of the cargo?

A. No, sir.

Q. Simply a carrier?

A. That is all, sir.

Q. Who was the owner of the cargo?

A. I do not know; the order came to me for the cargo.

Q. Did your boat remain here during the whole of the winter after this injury?

A. Yes, sir.

Q. And returned to Buffalo in the spring?

A. Yes, sir.

Q. At what time in the spring?

A. She left here as soon as the canal was opened.

Q. How long was she being repaired in Buffalo?

A. 25 days.

Q. How long was she in going up?

64 A. I think she arrived in Buffalo on the 6th of May. I think she left here sometime in March to be towed up to Troy. She left Troy the 1st day of May, I suppose.

Re-direct.

Q. You were the owner of the boat and carrier of this cargo from Buffalo to New York?

A. Yes, sir.

Q. And the owner of the boat and carrier also at the time she was on this trip from Atlantic dock to pier 44?
A. Yes, sir.

By Judge Marvin:

Q. The reason your boat was not taken right back to Buffalo at once was the canal was closed?
A. Yes, sir.
Q. She could have been repaired here in New York?
A. Yes, sir.
Q. You think the repairs would have been a little cheaper?
A. Yes, sir, considerably.
Q. But how much you do not know?
A. No, sir.

James C. Daniels, called by the libellants, being duly sworn testified.

Q. You were a commission merchant in Dec., 1863?
A. Yes, sir.
Q. What was the name of your firm?
A. G. B. & J. C. Daniels.
Q. Were you consignees of wheat by this boat "McCord," from Buffalo?
65 A. Yes, sir.
Q. Did you effect a policy on the cargo of the boat here with the Washington Ins. Co.?
A. Yes, sir.
Q. What is the date of it?
A. November 28, 1863.
Q. For how long?
A. One month.
Q. That was after the arrival of the boat?
A. Yes, sir.
Q. Was it by your order that she went from Atlantic basin to pier 44?
A. Yes, sir.
Q. You were informed of the casualty?
A. Yes, sir.
Q. Then what did you do?
A. We rendered this bill to the Washington Ins. Co.
Q. And was it paid?
A. Yes, sir.
Q. You made out a bill for the cargo?
A. Yes, sir.
Q. Was the insurance on the passage of the boat?
A. There was an insurance made out at Buffalo, but it had run out; this was on harbor insurance.
Q. You sold it before you rendered the bill to the insurance co.?
A. We rendered a bill to the insurance co.
Q. Was that at the market rate?

A. Yes, sir; at the rate that we had sold the wheat; we had previously sold the wheat, and when the accident happened we made
66 out a bill to the insurance co. at the same rate at which we had sold it, and they paid us for it.

Q. How much a bushel?

A. $1 48 c. a bushel.

Q. That was the market price?

A. That was what we had sold it for.

Q. This is a copy of the bill that you made out?

A. Yes, sir. (Marked "Exhibit B.")

Q. Then you executed this assignment?

A. Yes, sir. (Marked Ex. "C.")

Q. Then after this sale to the insurance co., the Washington Insurance Co. took the whole charge of saving the cargo?

A. Yes, sir; we did not have anything further to do with it; we turned it over to them, and they took charge of it.

Francis Weaver, called by the libellants, being duly sworn, testified:

Q. You were master of the boat "McCord" at the time of this casualty?

A. Yes, sir.

Q. Where was she on the morning of Wednesday, the 9th of Dec.?

A. In the Atlantic basin, Brooklyn.

Q. What had she on board?

A. She had on a cargo of wheat.

Q. Who were the agents of the boat here?

A. C. H. Gage & Co.

67 Q. Do you know what quantity of wheat was on board?

A. I do not, sir; I only know what was told me.

Q. You only know what quantity was said to be on board?

A. That is all.

Q. Who engaged the tug-boat "Will'm F. Burden"?

A. I did myself.

Q. By whose order?

A. By order of C. H. Gage.

Q. What did you engage her to do?

A. I engaged her to tow the boat "McCord" from Atlantic basin to pier 44 East river, New York side.

Q. Do you recollect the ship that you were to go to?

A. Yes, sir.

Q. What was it?

A. The Whampœ.

Q. For what purpose?

A. For the purpose of discharging the cargo on to the ship.

Q. Where was the "Burden" at the time you engaged her?

A. She was at Atlantic basin.

Q. Did she take you in tow?

A. She did.

Q. About what time?

A. About 11 o'clock in the forenoon.

Q. Do you recollect the day?
A. It was the ninth day of December, at 11 o'clock.
Q. To take you to pier 44, to discharge the cargo?
68 A. Yes, sir; pier 44 is on the New York side; the Atlantic basin is on the Brooklyn side.
Q. On which side of the "Burden" was she taken in tow?
A. On the port side, or left hand side.
Q. How was she made fast to the "Burden"?
A. By a spring line we had to tow by, a bow line and a stern line; three lines—one line forward, one aft, and the spring line amidships.
Q. And she moved as the "Burden" moved?
A. Yes, sir.
Q. Who was in command?
A. The pilot of the tug had command of the canal boat and tug too.
Q. Where was she when taken in tow?
A. Tied to the dock at Atlantic basin.
Q. What was the length of the canal boat?
A. 96 feet.
Q. And what was the length of the "Burden"? Which was the longest?
A. The canal boat was longest.
Q. How were their stems? were they in line?
A. Very near in line.
Q. The stem of the "McCord" was nearly in a line with the propeller's stem?
A. Yes, sir.
Q. How were their bows?
A. The canal boat's bow was ahead of the propeller's.
Q. How much?
A. I cannot tell exactly. I cannot tell the length of the propeller.
69 Q. But it projected forward some?
A. Yes.
Q. How was the tide?
A. Ebb; it was not more than half tide, I should think.
Q. Running pretty strong?
A. Yes, sir.
Q. After the propeller took you in tow, what course did you take?
A. We took the Brooklyn side of the river; we went up the river on the Brooklyn side, close to the shore, as near as we could, to keep out of the tide.
Q. Were you on deck?
A. I was; about midships.
Q. Did you see the other steamboat before the collision?
A. I did, sir.
Q. Where were you when you first saw her?
A. I was standing on the cabin when I first saw her.
Q. Where was your boat?
A. She was below Fulton ferry.
Q. Where was the "Joseph Johnson"?

A. She was on the New York side when I first saw her.
Q. Whereabouts, up or down the river?
A. She was up the river.
Q. Above the Fulton ferry?
A. Yes, sir.
Q. How far above?
A. I cannot tell exactly; I suppose piers 45 or 50.
Q. You were below?
A. Yes, sir.
Q. How far below?
A. I am not acquainted with the piers, but some little way
70 below Fulton ferry, perhaps 2 or 3 piers.
Q. How was the "Johnson" coming?
A. Coming across the river, a kind of quartering down the river.
Q. And you were going along up on the Brooklyn side?
A. We were going straight up the river and the "Johnson" kind of heading down.
Q. Inclining towards the Brooklyn shore?
A. Yes, sir.
Q. You saw them come together?
A. Yes, sir.
Q. Describe what you saw, what happened from that time, and how they came together.
A. Just before we got to Fulton ferry, on the Brooklyn side, the first I saw she was like to come into us, and I spoke to the pilot; both blowed the whistle. I did not take notice whether they blowed more than once or not; I was a little excited. She was heading partly down the river and stopped; after she stopped, the pilot of our tug asked them if they could not get along without running into us.
Q. You heard the whistle blown before they came together?
A. Yes, sir; we were running straight up the shore, the "Burden" with the canal boat in tow.
Q. In the eddy, inside of the tide?
A. Yes, sir.
Q. And the other boat was inclining towards Brooklyn?
71 A. Yes, sir.
Q. Then you heard the whistle blow?
A. Yes, sir; I did not pay much attention to the whistle; I do not understand the whistles at all; I did not pay much attention to them.
Q. You heard the whistles blown and did not pay much attention to them?
A. Yes, sir.
Q. Did each boat slow and stop?
A. They stopped their engines, but the boats did not stop; both boats stopped their engines.
Q. Then what?
A. The "Scranton" started up again soon after and ran into us.
Q. Did the "Borden" start ahead, too?
A. Yes; the "Borden" started ahead, too, and tried to clear her.
Q. Both boats stopped and then started ahead?

A. Yes, sir.

Q. Did they come together?

A. Yes, sir; before they came together the pilot of the tug hallooed to me and asked me to put the helm aport to see if we could not sheer away from them; I spoke to the man who was nearer the helm than me, and he sheered her all he could.

Q. The helm was put aport when the order was given?

A. Yes, sir.

Q. You are sure you heard the whistle from both boats?

A. Yes, sir.

Q. But you cannot tell which was first?

72 A. No, sir.

Q. Nor how many blasts were blown?

A. No, sir, I cannot tell; I was excited at the time, and did not pay much attention to it, any more than I heard them.

Q. Were the engines of both boats stopped after the whistles?

A. They were; they saw they were likely to come together.

Q. After the whistles the engines both stopped, and then they both started ahead again?

A. Yes, sir.

Q. And then they came together?

A. Yes, sir.

Q. Was there anything in the way?

A. No, sir.

Q. Any effort to back water on either boat?

A. No, sir; neither boat backed.

Q. This hail from the pilot of the "Borden;" was that after they both stopped and both started ahead again?

A. Just as they stopped the pilot of the propeller hailed the steamboat and asked if they could not go along without running into us.

Q. What struck against you?

A. The bow of the steamboat.

Q. Where did she hit you?

A. About amidships; about two feet aft of amidships.

Q. At what angle?

A. Right angle, as near as could be.

Q. Did you see the cut?

73 A. I did.

Q. Describe it?

A. I could not see how far it was cut down until after she was unloaded; as far as I could see she was cut.

Q. How deep?

A. As far as that the water got right into the deck.

Q. You saw her afterwards?

A. Yes, sir.

Q. Describe how she was then.

A. I think she was cut down about 5 feet or 5½, along there; I did not measure it.

Q. Was the side cut through?

A. Cut through.
Q. Was she cut below her loaded line?
A. Yes, sir; below water line.
Q. Was it cut down to her light water line?
A. No, sir.
Q. After this cut did the boat make water?
A. It did.
Q. What was done with her?
A. We thought to get her over to the slip if we could in the first place, and get out the load, but we found we could not do it and we started the pumps; we found the water was making too fast for us, and we started for a shoal slip, if we could find one; the mate of the tug knew of one, and we towed her over to the Brooklyn side again; we towed her over to New York in the first place, but found the water making so fast that we moved for a slip where we could
74 beach her.
Q. You took her where?
A. Into the first slip above Fulton ferry, on the Brooklyn side, and beached her.
Q. As soon as you got her fast you went to the Washington Ins. Co. and reported her condition, and they took charge of her?
A. Yes, sir; their agent, Mr. Horne.
Q. What was done?
A. They went to work taking off and saving what wheat they could; the pumps were set to work and men to take off the grain—the dry wheat that could be taken off that day.
Q. What was done with the wet?
A. The wet wheat was also taken off the next day in a lighter.
Q. Where was it taken to?
A. To the Atlantic store; I do not recollect the name.
Q. That was done under the direction of Mr. Horne?
A. Yes, sir.
Q. What was done with the boat after that?
A. Taken to the Erie basin and beached and caulked.
Q. You say there was nothing in the way there?
A. Nothing; it was clear all around there at the time of the collision.

Cross-examined.

By Mr. Benedict:

Q. There was nothing away outside of it?
A. Nothing in the way.
Q. Nothing to prevent the "Scranton" going down under
75 your stern?
A. No; sir, nothing at all.
Q. You were outside of the tide?
A. Yes, sir.
Q. There was a large eddy there which boats coming up, took?
A. Yes, sir.
Q. Was the tide pretty strong there?
A. Not where we were. It was running strong out in the tide—very strong out in the tide.

Q. How fast were you going?

A. I do not know; not very fast. We were towing a canal boat loaded heavily.

Q. Against the tide?

A. As far as there was a tide.

Q. Keeping in the eddy?

A. Yes, sir.

Q. How many boats had the "Scranton" in tow?

A. Two empty boats.

Q. One on each side?

A. Yes, sir.

Q. Did you know the "Scranton?"

A. I know her when I see her.

Q. Is she pretty large—larger than the "Borden?"

A. Yes, sir; a large steamboat—a tow boat.

Q. The "Borden" is a propeller?

A. Yes, sir.

Q. A small harbor propeller?

A. Yes, sir.

Q. Did the "Scranton" seem to come down at a pretty good speed?

76 A. I should say so.

Q. How fast was she coming down?

A. She was coming pretty fast. I thought it was an ebb tide. We were going up against the tide.

Q. You say you thought you were two or three piers below Fulton ferry when you first saw the "Johnson?"

A. We might be.

Q. Do you think you were then as far as Wall Street ferry?

A. I think so. The Johnson was over on the New York side when I first saw her, about pier 44 or 45.

Q. You think the "Borden" was then opposite the Wall Street ferry at the first time you saw the "Scranton?"

A. Yes, sir.

Q. Who was nearest to the shore at the time you saw her?

A. We were nearest to the shore. When I first saw her we were not far from the Wall Street ferry. She was along by pier 40 or 44 on the New York side; that is, as near as I could judge. I thought she started out from the pier when I first saw her, but she was on the New York side, out in the river. She came along out in the middle of the river first, and then down. We were not far from Fulton ferry when I saw it was like for a collision. I then

77 spoke to the pilot, and said "What are these fellows going to do? Are they going to run into us?" And he blowed the whistle. (The witness marks upon a diagram the position of the vessels when he first saw the "Scranton.") She acted as if she wanted to head into the slip here, I suppose. (Witness marks the position of the vessels when the collision occurred.) They had plenty of time to clear us after the pilot of the propeller hallooed to them. We were running right up along in shore from the tide.

Cross-examined.

By Judge Marvin:

Q. You were the captain of the canal boat?

A. I had charge of her. I took her to take care of her for the winter.

Q. Were you on board of the canal boat?

A. Yes, sir.

Q. That was your position at that time?

A. Yes, sir.

Q. Have you been accustomed to be moved and towed about in this river, and do you understand these whistles made by the boats?

A. I do not understand the whistles, but I understand the handling of canal boats.

Q. You do not understand the whistles?

A. No, sir.

Q. How many whistles did you hear, and from which boats?

78 A. I heard one, certainly, and I cannot tell whether any more or not.

Q. One whistle, from which boat?

A. I think both blowed the whistle. I cannot tell whether they blowed any more or not.

Q. Your attention was not particularly called to the whistle, not being particularly interested in it?

A. No, sir.

Q. How far apart were these boats when you first heard the whistle?

A. I cannot tell. They were not a great ways apart. They might have been 10 or 15 rods apart.

Q. Was the distance equal to the middle of the river?

A. No, sir.

Q. Do you know which boat blowed its whistle first?

A. I do not.

Q. And you have no distinct recollection in regard to the whistle, but you think that both blew the whistle?

A. Yes, sir.

Q. Still you do not distinctly remember that fact?

A. No, sir.

Q. I understand you say that you heard the whistle, but how many whistles, or on which boat, you cannot say?

A. I think they both blowed, but how many I cannot tell.

Q. What was done on the canal boat when you apprehended this collision?

A. Just before the collision, the pilot of the "Burden"

79 told us to put our helm aport and sheer clear of her, if we could.

Q. Was that done?

A. Yes, sir; by a man on board with me, named Carver. He was stationed at the helm.

A. Do you know who took charge of this cargo when you went to bailing her out?

A. Mr. Horn.

Q. After the wheat was out of the boat, you took the boat back to Atlantic basin?

A. No, I did not. I did not go on her after that. I had nothing more to do with her after she sunk. Mr. Horn had charge of her after she sank, and Mr. Carver was on board of her, I think.

Q. Was anything done to the boat between the time she struck and the time you left her for good, in the way of fixing?

A. We tried to keep her up until we got into the slip, and made her fast in the slip.

Q. Was anything done after you got the wheat out of her?

A. She was taken round to the Erie basin—that is what was told to me. I do not know anything about that.

By Mr. Benedict:

Q. You were not captain of her longer?

A. No, sir.

Q. Did you bring her to New York from Buffalo?

A. No, sir. I took her to take charge of her for the win-
80 ter. I was living here for the winter, and took charge of her and a number of other boats.

Q. You went to discharge the wheat?

A. Yes, sir.

Q. After the collision you endeavored to go over to the slip?

A. Yes, sir.

Q. Did you go there with her?

A. Yes, sir.

Q. And finding you could not get there with her, you went to the Brooklyn side and beached her?

A. Yes, sir.

Q. And there took out the wheat?

A. Yes, sir.

Q. Were you there when they took out the wheat?

A. Yes; when they took out part of it.

Q. After this blow was struck, and you started to go to the slip, did you do anything there to repair and fix her up?

A. I went into midships and trimmed the grain over to the opposite side, to lift her up. I thought she was not cut below the water; but I found there was no use, she was making water too fast.

Q. How many men on board of her?

A. Myself and another man.

Q. Was he one of the crew?

A. Yes, sir, with me.

Q. Had he come down with her from Buffalo?

A. No, sir.

Q. Did he and you help with the grain?

A. Yes, sir; I believe we had some help from the propeller.

81 Q. That is all you did until you got over to the Brooklyn side again?

A. Yes, sir; with the exception that we got some pumps after we got to New York; we stopped long enough to borrow some pumps at New York.

Adjourned to 11 o'clock to-morrow.

Endorsed: U. S. District Court. Irwin McCord *et al. vs.* The St'bt Joseph Johnson, or Scranton, and the propeller Wm. H. Borden. Copy of stenographer's minutes, April 13, 1865.

82

83 United States District Court, before Hon. Judge Betts.

IRWIN MCCORD
vs.
THE ST'B'T JOSEPH JOHNSON, OTHERWISE THE Scranton, and propeller Wm. F. Burden.

FRED'K A. POTTS
vs.
THE WM. F. BURDEN.

SECOND DAY, *April* 28, 1865.

84 George Carner, called by the libellants, duly sworn, testified:

Q. You were on board the boat "Kate McCord" at the time of this casualty?

A. Yes, sir; in tow of the Borden.

Q. You were a hand on the McCord?

A. I was at that time; the man who was taking care of the boat, Mr. Weaver, got me to go over with him, to help him over to the slip.

Q. Where did you start from?

A. Atlantic basin, Brooklyn.

Q. On which side of the "Borden"?

A. On the port side; the canal boat was on the outside of the Borden, the river side.

Q. What was your course after leaving the Atlantic basin?

A. We kept up the East river, close to the Brooklyn shore.

Q. Did you see the "Johnson" before you came together?

A. I did, sir.

Q. Where was your boat at the time you saw the other steamboat first?

A. We were above the Wall Street ferry quite a piece.

Q. And below the Fulton Street ferry?

A. Yes, sir.

And where was the "Johnson," when you first saw her?

A. Above the Fulton ferry.

Q. How far above, in what part of the river, and what was her course?

A. She was quite a distance above it, and she was pretty well over on the York side, coming down the river, circling down.

Q. Was she inclined either way?
A. She was heading to the Brooklyn shore.
Q. Coming down the river, inclined towards the Brooklyn shore?
A. Yes, sir.
Q. What next did you observe? You saw them come together?
A. Yes, sir.
Q. Where did you stand on your boat?
A. Just before they came together I stood pretty near midships of the boat and the pilot of the boat "Burden" ordered a man to go to the helm, and Mr. Weaver told me to go to the helm. I did so.
Q. Did you get any order?
A. I was ordered to put the helm aport.
Q. Did you do that?
A. I did, sir.
Q. Ordered by the pilot of the "Borden"?
A. The pilot or captain, I cannot say which; one of the men on the "Borden."
Q. Go back to the point when you saw her inclining towards Brooklyn; describe what was done before they came together.
A. The "Borden" was going up along the Brooklyn shore, between Wall street and Fulton ferry, up in the eddy, a little piece from the piers, I should think. This boat came down the
86 river, circling around, and struck her. Just as she got to the Brooklyn shore she headed in pretty near, and struck the boat pretty near square.
Q. Which side of the "Borden?"
A. The port side.
Q. Did she cut into her?
(Objected to.)
Q. What did she do to the canal boat?
A. She cut her side pretty near through, smashed through.
Q. Did you hear any signals from either steamboat before she hit?
A. I heard a blast from the "Borden's" whistle, one blast.
Q. Did you hear any from the other boat?
A. Not that I recollect. I do not recollect hearing any from the other boat.
Q. Go on and tell us whether the steamboat did anything; whether they stopped before they hit.
A. Both steamers stopped before they hit, and then started ahead again, and then the collision took place. I did not see either of the steamers back; I did not see any backing.
Q. When you say that both stopped and went ahead again, do you mean that both boats stopped and then went ahead, or that the engine stopped?
A. The engines stopped; they did not stop their headway.
Q. Both engines stopped, and both started ahead again?
87 A. Yes, sir.
Q. And then they came together?

A. Yes, sir.
Q. At what angle?
A. About square.
Q. What part of the "Johnson" struck your boat?
A. The bow of the "Johnson" struck the "Kate McCord."
Q. What part of your boat did she strike?
A. Pretty near midships, about two or three feet from midships; a little aft, I think; the centre of the boat is what I mean; on the port side of our boat.
Q. Did she make any cut into your boat?
A. She cut through on to the deck; through the sheer plank and two planks of the decking on the deck, about 1½ feet into the deck; it might not have been quite as much, but near it, I think.
Q. How far down the side?
A. About 5 feet or 5½ feet, I think.
Q. Was that below her loaded water line?
A. Yes, sir.
Q. Was it as far down as her water line, when light?
A. No, sir.
Q. How near the water line when light?
A. About 3 or 4 feet, or along there I should say.
Q. What happened after that?
A. We went to work and undertook to get the canal boat to the slip to unload her, but could not do so; we then ran her into the slip above Fulton ferry, to save the boat and cargo if we could; we commenced shifting over wheat, and pumping her to save her.
88 Q. When was that done?
A. Right away after she was struck we commenced shifting the wheat, to list the boat over; to get the leak out of the water, so as not to leak.
Q. What was done in the slip?
A. The boat was made fast there, and the insurance agent, Mr. Horn, came to take charge of her.
Q. What did he do?
A. He commenced unloading her that evening right away.
Q. You do not know where he sent the wheat, do you?
A. The wheat was taken to Boyd's drying factory and dried, I believe.
Q. Did it all go there?
A. I guess it did. I do not know what was done with the dry wheat.
Q. After the cargo was discharged, where did the boat go?
A. About a week afterwards I was to Erie basin, and saw the boat in there.
Q. You did not go up with her to the Erie basin?
A. No, sir; I left her before she got quite all her cargo out at Boyd's store at Atlantic dock.
Q. Have you stated whereabouts this collision took place?
A. Pretty near the Fulton ferry, just below the Fulton ferry a little ways.

Q. On which side of the river?
A. The Brooklyn side.
Q. And how near the shore?
89 A. I cannot say; she was not very close to the shore, nor a great ways from it. I cannot tell exactly how far.
Q. State according to your best judgment. Do you think half a mile?
A. No, sir; I cannot tell.
Q. The tide was ebb?
A. Yes, sir.
Q. Where was the ebb?
A. In the middle of the river.
Q. How was it where you were?
A. An eddy.
Q. Your boat was out of the tide?
A. Yes, sir.
Q. Where was the Scranton before the collision in reference to the tide?
A. She was out in the river a little way, just above the "Borden," and coming towards her.

By Mr. Benedict:

Q. The "Borden" was going up right parallel with the dock?
A. Yes, sir.
Q. Was there any change in her course either way until the blow?
A. Not that I know of.
Q. Do you understand the meaning of the whistle?
A. No, sir; I do not know anything about steamboating.
Q. You say you heard the whistle?
A. The "Borden's" whistle once—one blast from the "Borden's" whistle.
90 Q. How about the other boat?
A. I do not recollect hearing any from the other.
Q. Were you standing where you could see the other boat?
A. Yes, sir; I was at the helm. I was looking at both of them as near as I could. I saw a collision was going to take place.
Q. You kept your attention on both of them?
A. Yes, sir.
Q. And you heard no whistle from the "Scranton?"
A. No, sir.
Q. You say both steamers stopped their engines?
A. Yes, sir.
Q. How far apart were they when both stopped?
A. Not a great ways apart—pretty close.
Q. Did both stop at the same time?
A. I think the "Borden" stopped first.
Q. You did not see any backing?
A. No, sir.
Q. Could you tell whether the engine was backing or going ahead by looking at it?

A. I could tell by the wheels.

Q. You could tell by looking at the wheels that there was no backing?

A. Yes, sir.

Q. You looked at the wheels to see?

A. I looked at the wheels of both boats; I did not see any backing. I stood where I could see the wheels of the Scranton; she was a side-wheel steamer.

Q. You say both started ahead again?

91 A. Yes, sir.

Q. At the same time?

A. I cannot tell which started first.

Q. You mean the engine started ahead?

A. Yes, sir.

Q. How many men were there aboard of the canal boat?

A. I think there were four on board, but only two that belonged on board at the time of the collision.

Q. After the blow, what did you do until you got over to the New York side?

A. I took the hatch off, and went shifting over the wheat.

Q. What was Capt. Weaver doing?

A. Commenced measuring the water and pumping.

Q. What did the other two men do?

A. I guess not anything; they got on the tug at the time of the collision.

Q. When you got over to the New York side you got some pumps?

A. Yes, sir.

By Mr. Marvin:

Q. Do you mean to say when the collision took place both engines were moving, going ahead?

A. Yes, sir.

Q. At the time time they struck?

A. Yes, sir.

Q. The engines of both were moving the boats ahead?

A. Yes, sir.

Q. And how near was your boat to the Wall Street ferry,

92 and on which side of the ferry at the time you first saw the other vessel?

A. She was a good deal nearer to the Fulton ferry than to the Wall St. ferry.

Q. Do you mean to say your boat was nearer to the Fulton Street than the Wall St. ferry at the time you first saw the "Johnson?"

A. No, sir; she was just above the Wall St. ferry a little.

Q. Was she above or below?

A. She was a little above it.

Q. Did you hear any bells from the "Johnson?"

A. No, sir; not that I know of.

Q. You are not accustomed to these bells?

A. No, sir; I do not know anything about steamboat bells.

Q. And the ringing of bells would not have been apt to make any impression in your mind?

A. No, sir.

Q. You cannot say much about the bells?

A. No, sir.

Q. Except you say you recollect hearing one whistle on board one boat?

A. Yes, sir.

Q. Do you understand the whistles of those boats?

A. No, sir.

Q. And if there had been several whistles, it would not have made an impression on your mind?

A. No different that I know of.

Q. You would not have been apt to recollect it if there had been any more than one?

A. No; I do not know I would.

Q. If there had been whistles on board the "Johnson,"
93 would you have been apt to have noticed it at the time and remembered it now, not understanding them?

A. I think I would have recollected it if they had blown their whistles.

Q. You cannot say they did not blow?

A. No, sir; I cannot say that.

Q. You do not know the use of whistles or bells?

A. No, sir.

Q. You say both of these boats stopped their engines?

A. Yes, sir.

Q. Did they both stop about the same time, or which stopped first?

A. I cannot tell which stopped first.

Q. And afterwards just before the collision took place, both moved their engines ahead?

A. Yes, sir.

Q. Where were you standing at the time this collision took place?

A. On the stern of the "Kate McCord," at the helm.

Q. You were at the helm?

A. Yes, sir.

Q. Had you any orders about the time the collision took place, so as to divert your attention?

A. No, sir; only when I went to the helm before the collision took place.

Q. What orders did you receive?

A. Only one I know of, to port the helm. I did so.

Q. Did the engines of these boats stop before you went to the helm?

A. I think not; I would not be certain about that.

94 Q. Try and recollect whether you noticed the engines of these boats were stopped before yon went to the helm.

A. No, sir; I think they were not stopped until I got to the helm.

Q. Then it was from the helm you think you observed the engines stopped?

A. Yes, sir; the wheels stopped; I looked at that.

By Mr. Benedict:

Q. Did you see how far apart they were when the engines started ahead again?

A. They were pretty close together; I cannot tell how far, but they were pretty close together.

By Mr. Fithian:

Q. Did you notice the canal boat after the collision? You speak about her being cut in. Did you notice the port side of the canal boat after the collision?

A. I think I did not look. I think I went to work shifting the wheat.

Q. Did you ever after examine the side of the boat to see what the injury was?

A. Yes; after the boat was unloaded at Erie basin I went to look at her.

Q. Had any repairs been done to her then?

A. I think there was some caulking done.

Q. Did you notice that side of the boat after the injury, and before any repairs were done, to see what her condition was particularly?

A. I cannot tell.

95 Q. Did you look at the hole?

A. Yes; there was a great hole cut through her.

Q. Did you examine to see whether there was any scraping or scratching of the canal boat on one side or other of the gash?

A. No; I do not recollect of any scratching.

Q. The question I ask now is, did you look to see whether there was any?

A. Yes; I looked to see.

Q. Describe the injury, if you looked to see.

A. The bow of the Scranton struck right in the side of the boat and cut it right through; her bow was pretty sharp, I suppose. She cut a hole right through the deck and into the sides.

Q. Did you notice anything else except the hole cut through?

A. Yes, pieces of the side broken along back from it.

Q. Did you notice there were some pieces of the side broken?

A. Yes; the side was broken right back from it, where it bent in and broke off.

Q. How far from the gash of the boat?

A. About a foot towards the stem.

Q. Did you notice how the two vessels lay in collision before they separated?

A. It was done pretty quick; I could not tell.

Q. Was there any perceptible pause of the boats at the time of the collision? Did they stay together any time that you noticed?

96 A. I do not know whether she did or not. I think she shoved the canal boat right away from her.

Q. Do you mean that the "Johnson" shoved the canal boat and the "Borden" away from her?

A. She might a little ways; I cannot tell how long.

Q. The canal boat and propeller were going across the bows of the "Scranton?"

A. They were going up the river.

Q. Across her bow?

A. They must have been running across her bows, or she across the "Borden's" bow.

Q. Which was it?

A. She was going up the river; the "Scranton" intended to land there.

Q. The Scranton struck your boat amidships, you going ahead and she going ahead?

A. Yes, sir.

Q. Then was not your boat going across the bows of the "Scranton?"

A. She was when she was struck.

Q. Do you mean to say that the blow of the Scranton stopped your boat and the Borden, so that she made no more progress ahead?

A. No, sir.

Q. How long then was it, if you can say, that the boats lay in connection, or which one backed off?

A. I could not tell you.

Q. Did your boat keep right on?

A. Yes, sir.

Q. Where did your canal boat go to immediately afterwards?

97 A. After the collision we went across to the New York side.

Q. How long did you remain there?

A. We did not lie there at all. I jumped off to get a pump.

Q. What pier did you go to?

A. I cannot tell.

Q. Then where to?

A. Over to the pier above Fulton ferry, the first slip.

Q. Which way did you go, on the New York side?

A. We rounded to, up the river, and went back to the slip above the Fulton ferry for low water.

Q. When the vessel struck the canal boat, were your lines parted in any way?

A. No, sir; they were not.

By Mr. Benedict:

Q. Where did you go to get the pumps?

A. To a canal boat at the end of the pier.

John A. Horn, called by the libellants, being duly sworn, testified:

Q. What was your business in December, 1863?

A. I was to work for the Washington Insurance Co. as inspector.

Q. Did you know of this collision?

A. I heard of it about 12 o'clock on the 9th of Dec'r, 1863.

Q. What did you do about it?

A. I got a lighter alongside and took off the dry wheat.

98 I went over to take charge of the cargo for the insurance company, and got there about half-past 12.

Q. Where was the boat when you went to her?

A. In the first slip above Fulton ferry, on the Brooklyn side.

Q. What did you do?

A. I got a lighter alongside and took the dry wheat, 1,200 and some odd bushels, and put it into Boyd's store.

Q. Then what did you do?

A. I commenced taking off the wet wheat and pumping the boat.

Q. Did you get the dry wheat off before the rise of the tide?

A. Yes, sir; the boat was under water at flood tide.

Q. Was all the wheat under water?

A. No, sir; there was 1,260 bushels taken off dry before the tide rose. She went on at half tide, I suppose.

Q. You sent the wet wheat to what store?

A. To Boyd's store.

Q. Did you see the break in the boat?

A. Yes, sir.

Q. Describe it.

A. She was cut down her side 5 feet 9 in. on the port side; the sheer plank and rail, and deck plank, were broken, and some of the deck timbers. I think the gash was open 4 inches at the top, and it closed up as it went down.

99 Q. What was the condition of the side?

A. The port side was driven in, and opposite side out about seven inches.

Q. For what length of the boat?

A. The whole length. She was the shape of an arch.

Q. Were the outside plank on the port side chafed towards aft?

A. No, sir.

Q. Where was the boat taken to after that?

A. I left her at Boyd's store. She was taken after that to the Erie basin.

Q. After that where?

A. In the spring to Buffalo, for repairs.

Q. Did you employ the men engaged in saving the wheat and lightering it?

A. Yes, sir.

Q. Did you pay this bill?

A. Yes, sir; I paid all the bills, and this is the one I made out to the insurance company, which they paid me. (Marked Ex. D.)

Q. This bill amounts to $472 38c.?

A. Yes, sir.

Q. The expenses of drying the cargo and selling, you had no charge of?

A. No, sir. I had nothing to do with it after the grain was put in the store.

Q. Did you see the boat after she was taken to Buffalo, in the spring?

A. Yes, sir.

100 Q. When did you see her?

A. I saw her the day after she got there.

Q. How as to her condition, then?

A. She was in the same condition as when I left her in the fall at Boyd's store?

Q. Did you superintend the repairs there?

A. Yes, sir.

Q. For what purpose?

A. For the Lamar Insurance Co. They wanted I should look after her, see she was repaired, and see there was no more work done than was necessary to repair the damages.

Q. Were you present at the time of the payment by the Lamar Ins. Co. to Mr. McCord?

A. Yes, sir. I think they paid $1,126 50.

Q. For what?

A. As their proportion of the loss.

Q. What loss?

A. For the repairs.

Q. You have the bill?

A. Yes, sir.

Q. After she was repaired, was the boat straight?

A. No, sir; her starboard side was crooked, about two inches bowed out, and they could not get it back straight.

Q. The balance of the bill for repairs was paid by whom?

A. By McCord.

By Mr. Marvin:

101 Q. You say that the Lamar Ins. Co. paid towards the repairs of the McCord $1,126 50c?

A. Their agent did.

Q. Did that payment cover the whole amount of the repairs?

A. Only their proportion of it.

Q. How much was the balance?

A. I think $225 30.

Q. This was to be paid by whom?

A. By Capt. McCord.

Q. The owner of the vessel?

A. Yes, sir.

Q. And these two items constituted the whole of the repairs upon the vessel?

A. The whole of the repairs done at that time.

Q. The two items constitute all the repairs made in Buffalo?
A. Yes, sir.
Q. The whole repairs made in Buffalo footing $1,351 80?
A. Yes, sir.

By Mr. Benedict:

Q. You had charge of the boat from the time you went there until the cargo was all out?
A. Yes, sir.
Q. How many men had you there pumping?
A. I had from one to 40 men to work on her, part pumping and part taking off the wet grain. The night of the 10th, I think, I had twelve men that stayed with her over night, to keep the water out.

102 Q. What rate of wages did you pay?
A. Half a dollar an hour for men pumping and working in the wet grain. It was cold weather, and I could not get them any less.
Q. Here is $250 paid out for labor, in pumping and taking up the wheat in four days; was that actually paid to men for that service?
A. Yes, sir; actually paid.
Q. The men were all employed on that service?
A. Yes, sir.
Q. You could not get along with less?
A. No, sir.
Q. You did not take anything back from these men?
A. No, sir. I tried to get them for three shillings an hour, but could not. I had to pay them half a dollar. The weather was very cold.

Frederick F. Lockwood, called by the libellants, being duly sworn, testified:

Q. Did you attend to the drying of this cargo that was saved?
A. Yes, sir.
Q. And paid the expenses?
A. Yes, sir.
Q. And what did they amount to?
A. Expenses of drying the cargo, $740 83, paid to Boyd & Co.; paid A. Hebart for selling, $32 28.
Q. What was the amount realized from the sale?

103 A. $6,298 30; 1,265 bush., 24 lbs., at $1 29 per bushel, amounting to $1,885 45; 5,191 bush., 35 lbs. damaged, sold for $4,412 85.
Q. Were the sales made at auction?
A. No, sir; they were made on the produce exchange.
Q. The expenses charged for raising the boat and cargo, drying the cargo, and this brokerage, were all the expenses of saving the cargo?
A. That is all the expenses.

Q. And deducting that amount from these proceeds gives the amount they claim for damage to the cargo?
A. Yes, sir.
Q. State the amount.
A. $5,314 29.
Q. Of what date?
A. That was the 12th of January, 1864. That closed up the whole thing.
Q. This is an exhibit of expenses and proceeds?
A. Yes, sir; that shows the whole loss, what was paid for the wheat, and the amount realized after paying expenses.
Q. That covers the whole of the cargo?
A. Yes, sir.
Q. Were you connected with the insurance co.?
A. Yes, sir; as adjuster.
(Paper marked Ex. E.)

C. Van Santvoord, called by the libellants, being duly sworn, testified to the fact that this suit was commenced in the name of Irwin McCord, with the consent of the Lamar Insurance
104 Company, in respect to the damage to the boat, for the benefit of either, as it may be arranged between them.
(The above testimony is taken, subject to objection that it is inadmissible, irrelevant, and incompetent, on the ground that there are no allegations in the libel which would permit the testimony, and that the Lamar Insurance Company is in no way made a party to the proceding.)
Counsel for libellant, McCord, rests.

Mr. Fithian reads the libel in the suit of Fred'k A. Potts, agst. The Wm. F. Borden, and proceeds to put in testimony on behalf of the claimants of the "Joseph Johnson," in suit No. 1, and of the libellant, Fred'k A. Potts, in suit No. 2. Reads deposition of Jonas T. Phillips.

Not having witnesses in court, counsel for the claimants of the Wm. F. Borden calls Solomon H. Tisdale, who, being duly sworn, testifies:

Q. Where do you live?
A. About six miles from Utica.
Q. Did you see the collision?
A. Yes, sir.
105 Q. Where were you?
A. I was on the canal boat alongside the "Borden."
Q. Did you belong on board of her?
A. No, sir.
Q. Did you belong to the propeller?
A. No, sir.
Q. Did you belong to any of these craft?
A. No, sir.
Q. How came you there?

A. I had a boat at pier 38 or 39, and I went from there down to the Atlantic dock to get a man by the name of Henry Tanner to take charge of my boat and take it over to Jersey City to put it into winter quarters; when down at the Atlantic dock I hailed the "Borden" to come up and take the William Petrie, and the took the canal boat McCord to tow up, and then get the "William Petrie," and I went along.

Q. You had no connection with this at all?

A. No, sir.

Q. How did the Borden go?

A. Right in close shore; pretty close in shore.

Q. When did you first see the "Scranton?"

A. Pretty near Fulton ferry; the Borden was going up stream and the other coming down.

Q. When you first saw the Scranton where were you?

A. Just below Fulton ferry.

Q. Where did you see the Scranton then?

A. Just out in the stream a piece.

106 Q. Over towards New York?

A. Not half way over; I think it was near the Broolyn side; she was coming down the river.

Q. Which way did she appear to be heading?

A. In to the shore, as I took it to be.

Q. How did she come down towards the Borden; on a straight line?

A. A kind of rounded to, heading into the docks, as I took it to be; rounding to a little.

Q. Where did you stand when you saw her coming?

A. On the canal boat.

Q. Where about on the boat?

A. About midships.

Q. Did you give attention to what was going on?

A. I was looking right at her coming.

Q. Did you have any apprehension?

A. I supposed she was coming right at the canal boat, and just before she struck I jumped over on to the tug.

Q. How did she strike?

A. She struck the boat midships; her bow srruck right into the side.

Q. Nearly square?

A. Pretty nearly square; not square in, but nearly.

Q. Did you see or hear anything before the blow?

A. The "Borden" blowed her whistle.

Q. How far apart were the vessels when the "Borden" blew her whistle?

A. They might be 15 or 20 rods.

Q. How many times did she blow her whistle?

107 A. Only once that I know of.

Q. Did you hear any whistle from the "Scranton?"

A. I did not.

Q. Did you hear any orders given on board the Borden or canal boat?

A. Some man hollered out to them where they were going to when they were coming pretty near.

Q. Do you remember the words?

A. I do not, only he called out how they were coming right into them.

Q. Did you hear any orders given on board the Borden or canal boat as to the helm?

A. No; I did not.

Q. You did not notice anything of that sort?

A. I did not.

Q. Did you notice whether the Scranton kept on her way, or whether she stopped?

A. I cannot tell whether she stopped or not, but she came along with a pretty good job. I cannot tell whether her wheel stopped or not.

Q. You can say she did not stop her way?

A. I cannot say whether she stopped her wheels or not; the Scranton came right along and did not stop her way.

Q. Did the Borden keep on?

A. She slacked.

Q. Did she stop her engine?

A. I believe she did; she stopped headway.

Q. When the people on the Borden hailed, did you hear any answer to the hail from the other vessel?

108 A. I did not.

Q. Do you know anything about the water there?

A. I am not much acquainted with the water.

Q. Do you know anything about the tide at that time?

A. I should think the tide was going out, going down.

By Mr. Marvin:

Q. Where do you say the "Borden" was when you saw the "Scranton?"

A. A little below Fulton ferry.

Q. How far?

A. Not a great ways.

Q. Pretty near the ferry?

A. Yes, sir; a little below, I should judge.

Q. Whereabouts was the "Scranton" when you first saw her?

A. Above, coming down the stream.

Q. In the centre of the stream?

A. No, nearer the Brooklyn side than the centre.

Q. How far off when you first saw her?

A. It might have been about 15 or 20 rods.

Q. Did you observe the "Scranton" before you heard any whistle?

A. I do not know that I did or not. I recollect their blowing a whistle, and saw her coming from the deck of the canal boat.

Q. Did you hear the whistle before you saw the Scranton?

A. I do not recollect whether I did or not.

Q. Did the Borden blow more than one whistle?

109 A. Not to my recollection.

Q. You remember but one?

A. That is all I recollect.

Q. Do you understand what those whistles mean?

A. I do not know, but I suppose it was to stop. I am not a sailor man or engineer.

Q. She may have blown more and you would not particularly have observed it?

A. That is all I recollect, is one whistle.

Q. Did you hear any whistle from the "Scranton?"

A. I did not.

Q. After you discovered the "Scranton," and that the vessels were approaching, did the "Borden" continue right on her course or change her course?

A. She slacked.

Q. Did she stop?

A. She stopped steam; as I recollect, they were under headway.

Q. How near were the vessels together when she stopped her engine?

A. They might have been ten rods and might have been nearer.

Q. Did she change her course?

A. Not that I know of; she did not appear to.

Q. She kept on her same course as far as you can judge?

A. As far as I can judge.

Q. Do you know whether the "Scranton" slacked her engine or stopped?

A. I do not know.

110 Q. But the two vessels approached and came together?

A. Yes, sir.

Q. You are unable to say whether the other vessel slowed or stopped her engine or not?

A. No, sir; but she was under headway when she struck.

Q. Do you know whether both engines were stopped at the time the vessels came together?

A. I do not know; only the Borden had stopped her headway.

Q. You said the "Borden" stopped her engine; did she start it again before the collision took place?

A. I do not recollect whether she did or not.

Q. Do you remember whether her engine was stopped at the time the collision did take place?

A. I cannot say. I recollect their stopping; but when they struck I do not know whether they were under headway or not.

Q. You cannot say whether the "Borden" was under headway when they struck?

A. No, sir.

Q. Did the stopping take place when you first saw the "Scranton?"

A. They blowed the whistle and stopped soon after that.

Q. Did they blow the whistle about the same time you saw the "Scranton?"

A. They blowed the whistle about the same time.

111 Q. About the same time you saw the "Scranton" they blew the whistle?

A. Yes, sir.

Q. You cannot say whether they started the engine again before the collision took place?

A. I cannot say.

Q. About what time did you notice the engine was going again, after they stopped?

A. As soon as the "Scranton" struck it a kind of crowded over the canal boat, and the Borden started right on again.

Q. How far from Fulton Ferry pier did the striking take place?

A. A short distance.

Q. How many feet?

A. It might have been 200 or 300 feet.

Q. Above or below the pier?

A. About right opposite.

Q. You think right opposite, 200 feet from the pier?

A. Two hundred or 300 feet, I should judge.

Q. Are you pretty competent to judge of distances on the water? Can you tell how much 200 or 300 ft. would be?

A. No, sir.

Q. You do not mean to speak with any degree of certainty of the distance?

A. No, sir; only guess at it.

Q. You think it was opposite the pier?

A. Yes, sir; nearly opposite.

Q. You did not understand the signals of the whistles?

112 No, sir; I was not an engineer, and did not know them.

By Mr. Van Santvoord:

Q. Did you jump on the propeller?

A. Just before it struck, I saw it was coming with such headway that I thought it would cut through the canal boat, and I wanted to be safe.

Q. When you jumped, how far were they apart?

A. When I jumped from the canal boat the Johnson might have been 35 to 50 ft. from the propeller.

Q. Did she appear to be coming pretty fast?

A. Yes, sir.

Q. How long had you seen the "Scranton" before [before] you jumped upon the propeller?

A. It was a short time.

Q. And how far off was she when you first saw her?

A. It might be 15 or 20 rods when I first saw her. I think that distance when they blowed the whistle.

Q. How long an interval between that time and the time she came into the McCord?

A. But a short time; it did not take long to run together.

By Mr. Marvin:

Q. It appeared to you that the "Scranton" was approaching the canal boat with some rapidity. Are you competent to tell
113 whether the canal boat was not approaching the Scranton? The appearance would be the same?

A. I do not understand you.

Q. You thought at the time the "Scranton" was coming down on you?

A. Yes, sir; certainly.

Q. Were you not going down upon the "Scranton"?

A. No, sir. We were going up stream.

Q. Were you not going up against the "Scranton" at the time the collision took place?

A. I should judge not.

Q. Why?

A. We were running on a straight course, and they were coming round.

Q. You were advancing as well as the "Scranton"?

A. Yes, sir; both were moving when I first saw her.

Q. At the time you jumped both vessels were moving?

A. Yes, sir; but the "Scranton" was moving the fastest altogether.

Q. That was your judgment?

A. Yes, sir; the current would have made her, if there was no steam on.

Q. How far apart were the two vessels at the time you jumped from the canal boat?

A. It might have been 25 or 50 feet.

By Mr. Benedict:

Q. As you were going up the propeller was going up along the docks and the "Scranton" coming in?

A. Yes, sir.

Q. Then she was coming in from outside the river?

A. Yes, sir; not square but a little on the side.

114 (For cause shown, the cause is continued into next term.)
Adjourned to Tuesday, May 2d, at 11 o'clock a. m.

115 United States District Court, before Hon. Judge Betts.

IRWIN MCCORD *et als.*
vs.
THE ST B'T JOSEPH JOHNSON or Scranton, and propeller William F. Burden.

FREDERICK A. POTTS
vs.
THE WILLIAM F. BURDEN.

MAY, 2*d*, '65.

116 Thomas Walsh, sworn on behalf of the claimants of the Johnson, examined by Mr. Fithian:

Q. State if you were in command of the steamboat Scranton or Johnson in the year 1863-1864?

A. I was.
Q. What was your occupation or profession?
A. Pilot.
Q. How long have you been in the business of a pilot?
A. I suppose over twelve years.
Q. In what waters?
A. All around the harbor of New York, North river, Sandy Hook and through the sound.
Q. You remember the occurrence of the collision between the steamer Scranton and the canal boat in tow of the Burden, in December, 1863?
A. Yes, sir.
Q. State if you were pilot of the steamer at that time.
A. I was.
Q. How long have you been in command of her previous to and up to that time?
A. I had been off and on to her. I had been, I suppose, six months or a year on to her, she had been rebuilt, overhauled.
Q. What time of day was it that this collision occurred?
A. I think somewhere about noon.
Q. State whereabouts that collision took place, in what locality?
A. That happened right off Fulton ferry.
Q. In the East river?
A. Yes, sir.
Q. On which side?
117 A. On the Brooklyn side.
Q. How far about from the ferry should you think it was that the collision occured when the two boats came together?
A. It was not over 150 feet; I don't think.
Q. Now go back and state where your boat had started from on the trip or voyage in which this collision occurred; where she started from and what she had with her.
A. I had two boats alongside; one of them I picked up at Williamsburg, and the other I picked up at the point of the Hook, and then I came down the river.
Q. Both of these boats you had picked up on the Brooklyn side?
A. One at Williamsburg and the other at New York.
Q. Which one did you pick up first?
A. I think I got the Williamsburg boat first.
Q. Then you started from that place and went where?
A. I started to go down to the Fulton ferry, Brooklyn.
Q. I mean before you got the Hook boat. I want you to give an account of your voyage that morning from the time you started until this collision took place. You first took a boat out at Williamsburg.
A. Yes, sir.
Q. From the time you got to the place where you got your Williamsburg boat, where did you steer to to get the other one?
A. To the point of the Hook.
Q. What direction is that from Williamsburg?
A. It is almost slanting across the river.

118 Q. Nearly opposite?
A. No; it is below it.
Q. What point in the Brooklyn shore is this part of the Hook opposite?
A. It is about South Seventh street, W'm'sburg.
Q. Opposite the navy yard?
A. It is on one side of it.
Q. When you picked up the boat at the point of the Hook, in what direction did you go?
A. When I came out into the middle of the river towards the navy yard, and so on down more on the Brooklyn shore, a stronger tide came down that way. I had got down as far as Marston & Powers' when I seen this other boat coming up.
Q. Name this other boat.
A. The Burden.
Q. How far should you think you were out in the river from the Brooklyn shore when you were opposite Marston & Powers' dock and saw this other boat coming up?
A. I could not say as to that; I might have been maybe twice the length of the boat, maybe two hundred feet out; I know I was close in.
Q. About what place was this boat (the Burden) that you saw coming up when you first saw her?
A. She was below Lochnis' store when I sited her.
Q. State where those places are, in reference to the Wall Street and Fulton ferries, whether half way between or how.
A. It is near on to Fulton ferry; it is about the same distance that I was above.
119 Q. Where was she with reference to the Brooklyn shore when you saw her coming up?
A. She was about the same as we, close in.
Q. When you saw that what did you do as to your boat?
A. I blowed two whistles.
Q. What does that indicate?
A. That is to go inside of them.
Q. Who to go inside?
A. For me.
Q. For your boat to go inside of the other?
A. Yes, sir; that would be for her to keep out.
Q. How distinct were those whistles blown?
A. Blowed as loud as we generally blowed them.
Q. How do you know that you blew those whistles as loud as usual? Who blew the whistles?
A. Myself. We have a cord that leads out to the end of the handle on the leverage to pull this down and lift it up.
Q. You had the control of those whistles?
A. Yes, sir.
Q. And you say you did it with your own hands?
A. Yes, sir.
Q. Did you get any response from the other vessel?

A. I got none from her.

Q. State whether those vessels were within hearing distance of those vessels?

A. Yes, sir; they were, [were;] I generally blow them in such a case.

Q. How was it in that case?

A. They didn't seem to regard my whistles.

120 Q. Was there any difficulty in hearing the whistles the distance those boats were to you?

A. No, sir; you could hear it as far again.

Q. State on this subject a little fuller. Have you had any difficulty at times in hearing whistles across the East river, from one side to the other?

A. Some whistles don't blow as loud as others; some are sharper, and some are shriller; they are different size. This whistle of mine was a very large whistle.

Q. Tell what course, as near as you can with regard to the other, was your boat heading when you blew your two whistles?

A. Heading a kind of slanting for Fulton ferry, a kind of hauled in a little.

Q. You say you were slanting in, heading down the river, a little slanting in towards the dock?

A. Yes, sir.

Q. Why was that your course? Had you any purpose or object in view?

A. I had a canal boat there.

Q. That you were going for?

A. Yes, sir; a little canal boat.

Q. Where did she lie?

A. She laid on the lower side of the pier, on the lower side of the ferry, just where we started.

Q. How near did the canal boat that you were going to pick up lie to the outer end of the dock?

121 A. She laid out pretty nigh on to the end; it is a very short pier and it is not much longer than the canal boat, any how.

Q. The canal boat lay just on the lower side of the dock?

A. Yes, sir.

Q. Near the outer end, or right by it?

A. She laid on this side here, with her bow out; she lay right out here; just inside of the end of the pier.

Q. Which way was the canal boat lying in reference to the pier?

A. She was heading right across the river.

Q. Her bow out towards the river?

A. Yes, sir.

Q. And her bow near the end of the Fulton dock?

A. Just inside of the head of the pier.

Q. And on the lower pier?

A. Yes, sir.

Q. So that the ferry would come in on the other side of the pier?

A. Yes, sir; she laid inside clear.

Q. In what position were you intending to place your boat in order to pick up this canal boat?

A. Coming down there to pick up a canal boat, the tide is generally slack, and we generally run in and go and get head on and get a line on to them and back them out, and when we back them out we slew round; there is a strong tide here, and the way we go up she naturally slews herself with the tide.

122 Q. You had a strong ebb tide going down the river?

A. Yes, sir.

Q. And a reflex or eddy-tide in behind that dock coming up the river?

A. Yes, sir.

Q. Which is caused by the bend of the river at the Fulton ferry?

A. Yes, sir.

Q. At what point in reference to the Fulton Ferry dock were you going to place your boat?

A. I wanted to get just below the slip to pick up this canal boat; that is, going down below or hard on to it.

Q. Were you going to turn round or not?

A. No, sir; to go right in.

Q. And to put your bow right up to her?

A. Yes.

Q. Right up to the bow of the canal boat?

A. Yes, sir.

Q. And fasten to the lines?

A. Yes, sir.

Q. And then to back out your boat and tow the canal boat out?

A. Yes, sir.

Q. That was the modus operandi by which you were to get that boat?

A. Yes, sir.

Q. Having blown your whistles, and not getting any response, what did you do next?

A. I slowed my boat.

123 Q. What is slowing your boat?

A. Ringing one bell; then the engineer answers that bell and shuts the steam off.

Q. What you mean by slowing her is to cause her to go with less speed?

A. To shut the steam off and then she will go just as slow as she can turn round.

Q. When you gave the signal to slow did the engineer slow her?

A. Yes, sir; he did.

Q. Did he cut the steam off?

A. Yes, sir; he must have shut it off, I suppose; that is his business to attend to; he answered my bells.

Q. Have you any recollection at about what speed you were going when you shut off the steam?

A. By land I might be going six or seven knots.

Q. That is tide and all?

A. Yes, sir.

Q. You don't think you were going that speed through the water?

A. No, sir; not in picking up around we do not.

Q. When you shut her steam off and she should run with the steam shut off, about what would be her speed?

A. She would go very slow, about half; she would not go half, because it shuts off very close.

Q. Did you do anything with your helm?

A. I told my helmsman to starboard his helm.

Q. And that would put the vessel in what direction?

124 A. That would be to go in to the left.

Q. Put her in towards the canal boat you say that you wanted to get?

A. Yes, sir.

Q. State whether or not you supposed that your signals had been heard and that this boat would take the other direction.

A. I could not tell anything about that; there is a supposition about that.

(Question objected to by Mr. Benedict. Question waived.)

Q. State if you starboarded your helm to pick up that canal boat.

A. I told the helmsman to starboard his helm; that is, when I stopped her.

Q. For what purpose did you give him that order?

A. To get inside to get this boat.

Q. Did the helmsman starboard his helm in pursuance of his order?

A. He did.

Q. What effect did that have on the course of the boat?

A. It fetched her in more; she struck this eddy, and, as she struck, she struck right head on.

Q. So that by that time your boat was just crossways in the river?

A. Not exactly; she was a kind of slanting, but she was not right straight in.

Q. And from that time till the time you had begun to slow her you had her gradually on the turn, swinging her in?

125 A. Yes, sir; you could not say she was coming quick, for she turned after she got in this eddy; the tide on her stem canted her when she struck it.

Q. That is, as she turned in, her stem right into the eddy, that threw her bow up the stream, and her stern being out in the tide and her bow in the eddy, it turned her pretty quick, turned her stern down and her bow up?

A. Yes, sir.

Q. Tell the court as near as you can how far off from you this propeller Burden was at the time your boat was that position, and what she was doing?

A. She might have been over a length from me, about one length.

By Mr. Benedict:

Q. The length of that boat?

A. Yes, sir.

Q. How long is that?
A. I suppose that might have been less than one hundred feet.
Q. Is not your boat one hundred feet long?
A. Mine is one hundred and twenty-seven feet; the length of this boat, I say.

By Mr. Fithian:

Q. Had you noticed anything that was done on the Burden?
A. When I rung to go back.
Q. Did you discover any danger of a collision, and when was it?

126 A. I seen then that he was keeping on to me; that he was going to cross me, or run into me; I then had to ring to go back.

Q. Did you do anything, and if so, what, when you saw that he was likely to come into you?
A. I rang two bells to go back.
Q. You didn't ring the two bells at the same instant?
A. No, sir.
Q. You rang the bell to slow her. Now what is the next bell?
A. To stop her.
Q. What position was she when you rang the bell to stop her?
Mr. Benedict. He didn't say that.
Q. You rang two bells to slow her?
A. Yes, sir.
Q. You rang the bell to stop her; did you say that?
A. Yes, sir.
Q. Do you say so now?
A. Yes, sir. If the boat is lying still two bells will make her go back, and if she is under way it will take two bells to stop her, and to go right back it will take two more.
Q. What did you next do, when you had turned round?
A. I rang one bell to stop her.
Q. About in what position was your boat?
A. I suppose I might have been a length and a half from her when I stopped her.
Q. From the Burden?

127 Q. Yes, sir; our boat was quite a distance off, may be two or three hundred feet away from the Burden when I rang the bell to stop her; it might have been more; I don't know that it was any less.

By Mr. Benedict:

Q. How far were you from her when you rang the bell to stop her?
A. I might have been two lengths of our boat from her.
Q. Which way should you judge your boat was heading when you rang the bell to stop her?
A. We were partially heading down for this eddy.
Q. The bow of your boat got into this eddy, so that it felt the force of the eddy before you stopped the boat?
A. I stopped her before she touched this eddy.
Q. Soon after you saw that this man was likely to go into you, or across you, you say you done something with your bell?

A. He coming on and not stopping, and my being stopped, I seen he was going to hit me, or take me somewhere, I rang to go back.

Q. Was that bell answered by the engineer?

A. Yes, sir.

Q. What was the result? did your boat go back?

A. Yes, sir; and in going back we parted both our stern lines.

Q. Did she go back?

A. Yes, sir.

Q. The engine began to work back when the bell was answered?

A. Yes, sir.

Q. Can you say how far the Burden was from you when your boat began to work back?

128 A. When I began to work back she was close on me.

Q. Had you seen anything done by the pilot of the Burden at or about that time in reference to the course of his boat?

A. He kept hauling his wheel over to port all the time, and kept running that way.

Q. Throwing the bow of his boat in towards the shore?

A. Yes, sir.

Q. Persisting to go inside of you, I suppose that was?

A. Yes, sir.

Q. State to the court how you know that your boat went back.

A. When I rang to go back, and kept on backing, I got hit then, and my boat slowed out right that way and our stern lines parted.

Q. You two canal boats were on each side of you, and were fastened by a bow line and a stern line?

A. Two breast lines forward, and the ones that parted aft.

Q. What lines are there aft?

A. They are breast lines aft.

Q. And then there is a tow line?

A. Yes, sir.

Q. When you were going, head on, what would be the condition aft of the breast lines in regard to whether they would be tight or loose?

129 A. They generally fetched up sometimes slack.

Q. What is the condition of the tow lines when you are going ahead?

A. They are taut when you go ahead.

Q. When you go ahead what is the condition of the stern lines that fasten the boat?

A. A strain comes on then a good deal.

Q. Were those lines parted in going back?

A. Yes, sir, they were parted going back.

Q. Of both boats?

A. Yes, sir; slewed them both around.

Q. Now tell if the pilot of the Burden stopped his boat in any way that you could see, or done anything towards it.

A. No, sir; he didn't, as far as I could see; he did not stop.

Q. Tell where you were struck?

A. Struck right on the stern. It took from the stern just a corner

down to her lower copper. It took a strip right out of her, and shoved her right round on the port side.

Q. The side opposite the direction from which the Burden was coming?

A. Yes, sir; shoved her right with her.

Q. I would like to have you describe how and in what shape and manner that canal boat came against the bow of your boat.

A. It was a side blow, just as if you struck her here and turned her right round. It was their weight that done it.

Q. Was it like a glancing blow?

130 A. Yes, sir.

Q. And that glancing blow twisted the stem of your boat off to the larboard side?

A. Yes, sir.

Q. State whether it was broken clear off, or how much off?

A. It knocked a part of it clear off, and the rest we had to knock away to get the copper in. It hung loose.

Q. When your boat is stopped, and under no way of working, how many turns of the engine will it take to give her stern way?

A. She might get it in two turns; that is, if she was lying perfectly still.

Q. Can you tell whether you were under any headway at the time you rang the bells to back?

A. She had some way on to her.

Q. Can you give the court any idea whether it was little or much?

A. I suppose she stopped her weigh in about a turn and a half or two turns; stopped herself dead.

Q. How long an interval was there between the bell to stop her and the bell to back her?

A. It might have been half a minute.

Q. Now was there time to stop most of her headway, or how much of her headway during that time?

A. We had her stopped.

Q. Before you got the bells to back her?

A. Yes, sir.

131 Q. Did you notice what was done by this propeller and canal boat, after the came into collision with you?

A. He was still heading across like that, and they jumped off the canal boat on board of the propeller and left her; that is, jumped away from her.

Q. Did the propeller and canal boat continue on or not?

A. Kept right on.

Q. Did you notice any stopping of headway on board of that propeller before the collision, and at the time of the collision, or after the collision?

A. None.

Q. Where did the propeller and canal boat go to?

A. She hove hard-a-starboard, and went right straight around, slued out into the East river.

Q. How far past you was he when he threw his helm hard-a-starboard to put her out in the river?

A. He had just got clear by her.

Q. Now suppose that he had continued right on in the course he was going before he threw his helm hard-a-starboard, and in the course he was heading when he came against you, where would he have went to in a few minutes?

A. He would have went into the dock.

Q. Into the Fulton Ferry dock?

A. No, the pier below that; he would have struck that.

132 Q. State if he could have cleared that dock between passing inside of you, if he had continued in the course that he was when he came in collision with you.

A. No, he could not, for it would run him into the dock.

Q. Now, having put his helm hard-a-starboard, and headed her into the river, where did he go?

A. He fetched up abreast of Beekman street.

Q. On the New York side?

A. The New York shore.

Q. Then what did you see of her?

A. I stopped there waiting. I was talking to the captain of the canal boat to see where he was going. I don't think she was leaking or he would have gone somewhere. He went on there up to pier 37, East river, and there he backed into a slip.

Q. On the New York side?

A. Yes, sir, and laid there for awhile; then he came out of there and I slued around and went out of the river, and he came down the river again abreast of Fulton ferry, and went in again where the collision was and left the boat there.

Q. How long a time elapsed between the time of the collision and the time when he got back and the Brooklyn side again, and beached his boat?

A. I guess it was all of an hour.

133 Q. Now, supposing your two whistles had been heard upon the propeller Burden, was there any difficulty in his starboarding his helm and heading out into the river before he got to you, any more than there was in starboarding it after he got by you?

A. No; there was nothing at all in the way to hinder him from doing that.

Q. Now, as a good pilot and a proper navigator, on hearing your two whistles, and seeing you heading in there, what ought he to have done?

A. It would have been his place to answer me or else stop his boat, the same as I done myself.

Q. What ought he have done after answering, and supposing he had stopped his boat?

A. He ought to have kept on the outside of me.

Q. Was there any more difficulty in reference to navigation in his going on the outside of you than there was in his going on the inside of you?

A. No more than to get into the tide way.

Q. Would he have to go into the tide to get by the end of the Fulton Ferry dock?

A. Yes, sir; he would.
Q. Whether you had been or not?
A. Yes, sir.
Q. (Referring to map.) I want you to show to the court on this map, as near as you can, the position of your vessel.
134 (The witness explains on the map the position of his boat.)

Cross-examined.

By Mr. Benedict:

Q. You picked up the boat on the point of the Hook last?
A. Yes, sir.
Q. You picked up one at Williamsburg?
A. Yes, sir.
Q. And from the point of the Hook you came down to the middle of the river?
A. Not exactly.
Q. Which side?
A. More on the Brooklyn side.
Q. From the Hook you started off sharp towards the Brooklyn shore?
A. Yes, sir; she didn't turn any way quick.
Q. You came straight along down there?
A. Yes, sir.
Q. A little to the Brooklyn side of the middle of the river?
A. Yes, sir.
Q. And had not seen the Burden till you got down pretty near the ferry?
A. I didn't see her until I got to Marston & Powers' stores, and then I sighted her; I first saw her just below the Catherine ferry.
Q. You still kept down a little to the Brooklyn side of the middle of the river?
A. I was close in when I got there.
Q. How far should you say you were from the end of the pier then?
135 A. I might have been two lengths of our boat off, or may be a little more; it may be two hundred feet or so; I was pretty close in, I know.
Q. Within two hundred feet?
A. I might have been that, and might have been a little more; I didn't measure it.
Q. You would say about two hundred feet?
A. Perhaps it might have been a little more.
Q. About three hundred feet?
A. It might have been that; I didn't think it would be much more than that.
Q. And this you kept right along the Brooklyn shore?
A. Yes, sir.
Q. Till you passed the Brooklyn Ferry slip you kept on that way, didn't you?

A. No; we kept getting closer all the way down till we got to the ferry slip and there we were closer.

Q. You kept hauling a little towards the shore till you got to the Brooklyn Ferry slip?

A. Yes, sir.

Q. How far were you out from the upper pier when you got there?

A. About the same distance as going down.

Q. I thought you said you had been hauling in all the time.

A. Coming down from above it naturally edges out there?

Q. You were about the same distance up?

A. About pretty near that.

136 Q. From the upper pier to the Fulton ferry you were about 300 feet off it?

A. Yes, sir; it might be that.

Q. You then starboarded your helm?

A. Yes, sir.

Q. Did she sheer in pretty quick?

A. She will answer her helm pretty quick.

Q. You sheered in with a kind of a sweep; you didn't sheer sharp in?

A. No, sir.

Q. What you would call rank sheer?

A. No, sir.

Q. Just as if you were going to round out?

A. Yes, sir; just the same as if I was going to pick up any boat.

Q. Question repeated.

A. No, sir; if I had rounded to she would have come out again; I wanted to come down a kind of quarter edge or so, so that she would strike for this eddy.

Q. Were you coming round as if you were going to run out?

A. It might look so, but I was not.

Q. You were going to head in and pick up your boat?

A. Yes, sir.

Q. When you first saw the Burden how far would you say she was below the Fulton Ferry pier, the lower pier?

A. She was below the De Forest pier when I first saw her.

137 Q. Did you see her when you were at the Fulton ferry, the upper pier?

A. Yes, sir; I seen her before that.

Q. Did you see her at that time?

A. Of course I did.

Q. Whereabouts was she?

A. She was close on to me.

Q. About how from the lower pier of the Fulton Street ferry, in your judgement?

A. Away from me?

Q. How far was she below the Fulton Street ferry when you were at the upper pier?

A. When I was at the upper pier I guess she was just this side of the long pier.

Q. What do you call the long pier?

A. The De Forrest pier.

Q. What do you call the De Forrest pier?

A. That is about here; when I was about here she was about there, about equal distance.

Q. When you were at the upper pier you think she was just about the same distance below the pier that you were above it?

A. Yes, sir.

Q. (Referring to map.) Then look at this line here. There is Catherine ferry, there?

A. Yes, sir.

Q. What I want you to tell me is whether you would say you came in at that line and turned right short in here, or turned right down that way?

A. When I came down I kept hauling down to this pier all the time.

138 Q. You were heading to the point of the long pier?

A. Yes, sir.

Q. Then you swept right in there?

A. Yes, sir.

Q. You stated that at a certain time you struck around so that you were about half in the eddy and half in the tide. The tide took your stern, and the eddy took your bow in?

A. Yes, sir.

Q. How far were you below the Fulton Ferry pier, the lower one?

A. I was about abreast of there, next to the slip, just about the pier a little bit; that is the lower slip that is right next to the pier where I was going.

Q. That is your boat lay at the lower pier of the ferry slip?

A. Yes, sir.

Q. On the west side of it?

A. On the south side.

Q. And from the time of which I am now speaking you were then heading about into the slip below?

A. Yes, sir.

Q. The slip below the Fulton ferry, I understood you to say?

A. About head on to the pier, but in a line with it.

Q. What pier?

A. I said the pier that is on the lower slip of the ferry; that is about where I was heading on.

139 Q. I asked you how far you were below the lower pier of the Fulton Ferry slip, and you said you thought you were about opposite the next slip below, didn't you?

A. Yes, sir.

Q. The next slip below the ferry pier?

A. No, sir, there are two ferry slips, and the first one is the upper one and the next one is the second; I was about on that one, not below the pier I was going to, but the ferry slip.

Q. Then you were heading round so that your bows were in the eddy and your stern was in the ebb before you got out to that slip?

A. Yes, sir; that is, she was just about like on to that there on the ferry slip, and here was the pier; when I stopped here there it was natural that she should work round.

Q. You understood that it was below towards Governor's island?

A. Yes, sir.

Q. How far did this collision take place below the lower pier of the Fulton Ferry slip?

A. It took place a little below the pier.

Q. I want your best judgment how far it was below.

A. It took place, I suppose, maybe a 100 feet or so.

Q. About one hundred feet below the lower pier of the ferry slip the collision took place?

A. Yes, sir.

Q. Does the tide run pretty strong there, the ebb?

A. The ebb tide forms an eddy there.

140 Q. I want to know whether the ebb tide runs pretty strong there?

A. It runs pretty strong in the river.

Q. I understand you to testify on your direct examination that before you backed your boat was dead in the water?

A. No, sir.

Q. You didn't mean to say so?

A. No, sir; not dead in the water; she had way on.

Q. But your engine was stopped?

A. The engine was stopped; that is all I said about stopping.

Q. Do you mean to be understood as testifying that you could stop the headway of your boat, when she was going at that rate, in two turns?

A. Yes, sir; I could stop her way in two turns with the tow she had and the way I had on at that time.

Q. So as to make her dead in the water?

A. I would not say perfectly dead, but the way would be stopped.

Q. I mean whether you would make her dead in the water?

A. It would be just as good as dead in the water; she would be dead there; I don't think she would move any more until I would move the engine; she would at the speed I had on then.

Q. After you got well under way coming down from the

141 Hook towards the Brooklyn shore, how fast were you going?

A. I might have been going maybe six miles, six or seven knots, that is by land and all; I did not say going through the water either; I was going easy, I was not driving.

Q. How much is the fastest speed of your boat usually?

A. She is a pretty fast boat.

Q. With a couple of little empty boats that is not anything serious?

A. No, but still tugging around.

Q. I am talking of going down with two light boats?

A. Picking up boats is tugging.
Q. You were going right straight along?
A. I was going in to get this boat.
Q. You had got your other boat?
A. I wanted that boat out.
Q. Do you mean to say you were not going over six or seven miles?
A. Not over that.
Q. How fast were you going through the water?
A. I could not tell that.
Q. Give your best judgement of it.
A. She might be going maybe about four.
Q. About four miles through the water?
A. Yes, sir; she might have been going less than that.
Q. And she might have been going more, perhaps?
A. Yes, sir; I was not timing her.
Q. How large a boat is she?
A. She is about 127 feet keel.
Q. How many tons?
142 A. The tonnage I don't know; somewhere about 200 tons, I suppose, or a little less.
Q. These two canal boats you had were empty, were they not?
A. Yes, sir.
Q. Were they canal boats or barges?
A. Canal boats.
Q. About these stem lines; what do you say broke those stem lines?
A. When I rung to go back, the strain came on those suddenly and they snapped, parted, and they slued right around away from me.
Q. Stem out?
A. No, sir; just broke off and drifted right on; they put them so that they slue on each side.
Q. That is to say they would have a tendency to break them on your boat?
A. No, sir; it was the strain that done that; in stopping the way of the boat it snapped the lines astern.
Q. Did you back no harder than usual?
A. No, sir; she generally backs good and strong when she backs.
Q. Do you generally break lines in that way?
A. Yes, sir; very often.

Examined by Mr. Van Santvoord.

Q. How many bells did you ring on the Johnson to slow?
A. I rung one.
Q. How many to stop?
A. One.
143 Q. How many to back?
A. Two.

Q. When you rang the bell to stop, you ring one bell and not two?

A. I ring one bell to stop.

Q. You don't ring two bells to stop?

A. One to slow and one to stop.

Q. Just the same as on other boats?

A. Just the same.

Q. How long an interval was there between the bell to slow and the bell to stop?

A. The regular time, I would say, I slowed her and went along, and then I stopped her; I slow her to let her go easy and see how things are going, and I sung out to them, "Starboard," and I stopped her, and I looked around, and when I seen how close he came on, I rang two bells to back.

Q. How long an interval was there between the two bells?

A. There might have been say half a minute.

Q. Between the bell to slow and the bell to stop her?

A. Yes, sir.

Q. How long between the bell to stop and the bell to back her?

A. It might have been about the same, or maybe a little less, I could not say, but I took the same time to ring the bell as I always do; I was in no hurry about it.

Q. How long between the bell to back and the collision?

144 A. Well, it might have been a little less than half a minute, or so.

Q. Between the bells to back and the collision?

A. Well, as soon as ever I slowed, when she was stopped.

Q. You stated the length of time between the bell to slow and the bell to stop. Now, I ask you the length of time between the bells to back and the collison?

A. Well, I suppose it might have been may be twenty seconds, or so.

Q. When did you first observe that the stern lines to the boats in your tow were parted?

A. When he got by me.

Q. After the Burden got by you?

A. Yes, sir.

Q. You didn't observe it till then?

A. No, sir; I did not.

Q. You didn't notice it till then?

A. No, sir; I did not.

Q. You didn't notice it until then?

A. No, sir.

Q. What was the thickness of those lines?

A. I could not say; I did not examine the lines afterwards. Stern lines are generally about two inches thick; some have different lines; they are not the steamboat's lines; they belong to the canal boats.

Q. They were lines furnished by the canal boats and not by the steamboats?

A. Not by the steamboats; they furnish the best lines.

Q. At what distance were you below the line of the
145 Catharine ferry when you first saw the Burden?

A. I might have been just a little below that, the next pier or two below, just where the coal wharf is, the upper end of it, when I seen her first.

Q. And the Burden at that time was one more below the ferry?

A. She was away below the ferry; I was this side of it, about half way, I should say.

Q. Who was at the wheel of your boat?

A. I was standing there myself, and a wheelsman at one side.

Q. Were you in the pilot-house?

A. Yes, sir.

Q. You were in the pilot-house, then, at the wheel?

A. Yes, sir.

Q. And you were navigating the steamboat?

A. Yes, sir.

Q. And was the wheelsman assisting you?

A. Yes, sir.

Q. Who was on the look-out on your boat?

A. I had men on deck, deck hands, down below on deck, standing around in different places to where they belonged. There is no particular place on board of a tug-boat for them to stand; they stand anywhere you send them to do anything; they are supposed to be all over the boat.

Q. There was no one stationed in any particular place for look-out, whose duty it was to look out?

146 A. It is the pilot's place to look out.

Q. It was not the business of these men to look out particularly?

A. No, sir; they are there, and they could see.

Q. But it was not particularly their duty to do it?

A. No, sir; without they are put there, or placed there for that purpose.

Q. They were not put there at this time, were they?

A. No, sir.

Q. This collision was in the day time?

A. Yes, sir.

Q. It was clear?

A. Clear weather.

Q. No frog?

A. No, sir.

Q. There were no vessels in view?

A. No, sir.

Q. Was there any other person on the boat it was to look out except yourself?

A. The wheelsman stood on the other side of me.

Q. Except him, and he was assisting you at the wheel?

A. Yes, sir.

Q. Under you direction at the time?

A. Under my direction.

By Mr. Benedict:

Q. I want ask a question with regard to the canal boats. These canal boats which you had, were they larger than your boats?

A. No, sir.

Q. Did they project as far forward as your boat?

A. No, sir; about ten feet back of my stem, I guess,

147 By Mr. Fithian:

Q. You were asked by the counsel if you had any look-out on your boat. State whether it is or not customary for tow-boats in this harbor to have any other look-out but the pilot.

A. No, sir; without is is a fog or a thick night.

Q. On a clear day, is there any look-out needed more than the pilot?

A. No, sir.

Q. A man who has got his eyes and can see has every opportunity to see from were the pilot is?

A. Yes, sir.

Q. Is there any place on the boat from which you can see better than from where the pilot is?

A. No, sir; it is the best place on the boat to see.

Q. You said in answer to Mr. Benedict that you thought the collision occurred 100 feet below from the lower pier of the Fulton Ferry dock; did you mean to say so?

A. I thought I was below; I was head on to the lower corner when he got by; I must have been below.

Q. Were you as far as 100 feet below?

A. I might not be.

Q. You said you were sweeping round. I want to know when you were going to pick up your canal boat there, did you intend your steamer was to lie crossways of the river, or intend to turn so, that your steamboat should head up the river?

148 A. I wanted to go head on to her, and pull her out.

Q. How came it you were 100 feet below the place you intended to head in? What force took you below the point where you intended to pick up the boat?

A. The tide carried me down, I suppose; I could not hold the boat still.

Q. Were you any further below the point of the Fulton Ferry dock than what the tide would carry you down?

A. No, sir; I do not think I was.

Henry Smith, called by the claimants of the Johnson, being duly sworn, was examined by Mr. Fithian:

Q. What is your occupation?

A. I was fireman at that time.

Q. What is your occupation?

A. Farmer.

Q. Were you employed at any time on board the steam'r Scranton or Johnson?

A. Yes, sir.
Q. When were you employed on her?
A. A year ago last winter.
Q. In what capacity were you employed on her?
A. As fireman.
Q. What is your age?
A. Twenty-five.

149 Q. Were you on board the Scranton at the time the collision occurred between her and a steamboat called the Burden?

A. Yes, sir.
Q. Where were you on the boat at the time of the collision?
A. In the engine-room.
Q. What was the first thing you noticed before the collision, in reference to the stopping of the boat?
A. I was cleaning the bright work at the time, and there was a bell rung to slow her.
Q. What is the bright work?
A. The polished portions of the engine?
Q. The bell rung to slow the boat?
A. Yes, sir.
Q. Did you look out, so as to tell the court about how your steamboat was when the bell rung to slow her?
A. No, sir.
Q. What next did you hear?
A. They rang another bell to stop her.
Q. When the bell rang to slow her, was she slowed?
A. She was.
Q. How do you know that?
A. Because I slowed her myself.
Q. Who told you to slow her?
A. The engineer.
Q. Was he there?
A. Yes, he was.
Q. Looking on by you?
A. Yes, sir.
Q. You next got a bell to stop her?
A. Yes, sir.

150 Q. How soon after the bell to slow her do you think you got the bell to stop her?

A. I do not recollect exactly, but it was a very short time afterwards.
Q. Was it, the engine, stopped?
A. Yes, sir.
Q. How do you know that?
A. I could tell she was stopped by the motion of her.
Q. Did you see who did it?
A. I stopped her myself.
Q. How came you to do it?
A. It was my orders.
Q. The engineer told you to?

A. Yes, sir.

Q. What order or direction did you get next in the engine-room after you got the bell to stop?

A. They rang two bells to back her.

Q. About what interval was it between the bell to stop her and the ringing of the two bells to back her?

A. I cannot say exactly, but it was a very short time.

Q. Was she backed?

A. She was backed.

Q. Who worked her backwards?

A. The engineer.

Q. What was his name?

A. Jonas Phillips.

Q. What bell did you get next after you got the two bells to back her?

A. That I cannot say.

Q. You do not remember?

A. No, sir.

151 Q. Did you feel the collision?

A. I did, sir.

Q. Was the engine working? and if so, which way, when the collision occurred?

A. She was working back.

Q. Can you tell whether or not the Johnson had stern way on her when you felt the collision?

A. I cannot say.

Q. You were not where you could see what the motion was in reference to the water?

A. No, sir.

Q. Does your recollection serve you as to how many times the wheel could make back before you got the collision?

A. No, sir.

Q. Did you hear any whistle blow by your boat?

A. Yes, sir.

Q. How far from your boat do you think she was?

A. I cannot say exactly how far.

Q. Give the court a little idea—as far as from you to me?

A. Yes; I should judge she was.

Q. That is 15 or 20 feet?

A. Yes, sir.

Q. Did you notice where the canal boat and the boat that was towing her went to after that?

A. No, sir; I did not.

Q. Is there anything else that you noticed there which you have not stated in answer to my questions?

A. I do not think there is.

152 Q. In what direction was your boat heading when you looked out?

A. She was heading into the east, towards the Brooklyn shore.

Q. Did you notice how far you were off from the Fulton Ferry dock, or how near you were to that?

A. No, sir; I did not.

By Mr. Benedict:

Q. Can you tell how far you were from any of the piers there?
A. No, sir.
Q. You did not notice?
A. No, sir.
Q. Did you see Fulton Ferry pier at the time?
A. Yes, sir.
Q. Was it as far off as the length of this court?
A. I should suppose so.
Q. This room is about 60 feet. Did the blow jar the vessel any?
A. Yes, sir; it did.
Q. A good deal?
A. Considerably.
Q. Start you a little off your feet?
A. Yes, sir.
Q. Which way did you go?
A. I went astern.
Q. Did it have any effect on your body?
A. Yes, sir; I stood in front of the engine and fell partly up against one of the hooks of the engine.
Q. Which way were you facing at the time of the collision, when this blow came?
A. I cannot tell exactly.
Q. Were you standing with your face forwards of the boat or aft?
153 A. I was standing facing the engine.
Q. Which way?
A. Facing the engine towards the stern of the boat.
Q. Were you looking towards the stern of the boat?
A. Yes, sir.
Q. How were you brought up against the hook—with your back against the hook, or the fore part of your body?
A. The fore part of my body.

By Mr. Van Santvoord:

Q. Were you in the engine-room?
A. Yes, sir.
Q. How long had you been there?
A. I cannot say exactly. I had been there some time to work.
Q. Where is the engine-room on the Scranton?
A. It is on the deck.
Q. How far aft?
A. It is forward; it is exactly midships, I suppose.
Q. Is it in a line with the wheels forward or aft?
A. It it forward of the wheel.
Q. How far forward?
A. The engine, I should suppose, was about 20 feet forward.
Q. What is there between the engine-room and the stern of the boat?

A. There is a boiler.
Q. Is there a door leading into the engine-room?
A. Yes, sir.
Q. On each side?
A. Yes, sir.
Q. Is the engine on the stem or stern side of that door?
154 A. The engine is aft of the doors; there are two doors; the engine is aft of both.
Q. The man working the engine to back her stands with his face towards the stern of the boat?
A. No, sir.
Q. As the man works it back with the lever, does he not stand with his face towards the stern?
A. Yes, sir.
Q. Then you correct your statement in that way?
A. Yes, sir; when he is working the engine he stands with his face towards the stem of the boat.
Q. Where are the hooks against which you were thrown?
A. On the side of the engine.
Q. How were you standing at the time the boat struck?
A. I do not know exactly; I was polishing one of the hooks.
Q. Did the blow throw you over backwards or forwards on the hook?
A. It partly threw me forward on the hook.
Q. Was it towards the stem or stern of the boat?
A. I was standing right forward of the hook and looking to the stern.

Patrick Slavin, called by the claimants of the Johnson, being duly sworn, was examined by Mr. Fithian:

Q. What was your business a year ago last winter?
A. I was boating at Elizabeth port back and forward from there to New York part of the time.
Q. Do you remember the time when there was a collision between the steamboat Scranton and the propeller towing a canal boat?
155 A. Yes, sir.
Q. Were you anywhere near at the time; and if so, where?
A. Yes, sir; I was, at the time of the collision.
Q. Where were you?
A. Going forwards.
Q. On what boat?
A. On my own.
Q. Where was your boat?
A. On the port side of the steamboat.
Q. Yours was a canal boat?
A. Yes, sir.
Q. You were lying on the port side of the steamer "Scranton?"
A. Yes, sir.
Q. When this collision occurred?

A. Yes, sir.

Q. How was your boat fastened to the "Scranton?"

A. With three lines.

Q. Describe where they were.

A. One astern, one at the bow, and a backing line; the backing line is on the bow, too; there was a tow line on also.

Q. Was your boat loaded or empty?

A. Empty, sir.

Q. Where were you standing in reference to your boat when this collision occurred?

A. I cannot exactly say, but I was going forward.

Q. Tell the court, as near as you can, what you saw and heard in reference to the collision.

156 A. I was down in the cabin of my own boat and heard a whistle. I went up to see what was the matter. I was going forward, and saw this propeller with a western barge going past us, and we got run into each other; we could not tell which ran into each other.

Q. How far off from you was the propeller with the canal boat in tow when you first saw her?

A. I did not see her until just as we struck; I saw her a second or two before; I saw her just at the time they struck.

Q. Did you notice which way the Scranton's engines were working when she struck?

A. No, sir.

Q. Did you notice anything about the motion of the Scranton?

A. Not in that way; I thought she was backing up on account of the parting of the line.

Q. Were your lines parted?

A. Yes, sir; my stem line was parted.

Q. When did you notice first that your stem line was parted?

A. It was, I consider, a little before the struck each other. I cannot tell how long exactly.

Q. You noticed, a little before they struck each other, that your stem line was parted?

A. Yes, sir.

Q. Was your attention called to it so that you can tell me how far from the dock the Scranton was when the two boats came together?

A. She was below the dock.

Q. How near to the dock do you think?

A. I think below the dock, about a boat's length.

Q. Did you notice how far out she was from the dock?

157 A. I should consider she was on a line with the end of the dock at the time; that is, as far as my eyes can tell me.

Q. Did you notice where the propeller went after the collision?

A. She went right across over on the other side. I do not know what slip she put into, if she put into any slip at all.

Q. Did you notice whether the propeller's engine was going or not?

A. No, sir.

Q. Did you notice whether the propeller stopped or kept right on?
A. She kept on.
Q. She did not stop?
A. She was going on.
Q. Did you notice the hurt that was done to the Scranton?
A. I think that her bow stem was turned over to one side.
Q. Which side—towards your boat?
A. Yes, sir; I think there was a slice knocked out of her.

By Mr. Benedict:

Q. You were down below in your boat until just at the time of the collision?
A. No, sir.
Q. You were in the cabin, did you not say?
A. No, sir; I said no such thing. I said I was down in the cabin at the time I heard the whistle.
Q. Was that not just before the collision?
A. Yes, sir; it was not at the time it happened, though.
158 Q. Did you come up, just as it happened, out of your cabin?
A. I was up before it happened.
Q. How long before?
A. I cannot say exactly.
Q. A minute?
A. Yes, sir; I guess so.
Q. A minute, or more?
A. It might be a minute, more or less.
Q. Where did you go on your boat?
A. Forwards; I might not go go right on the minute. I was going forwards when the collision happened.
Q. You had not got forwards?
A. I was very near it.
Q. Did you run or walk?
A. I walked.
Q. When you first saw the blow how far do you think you were from the bow of your boat?
A. I cannot exactly say.
Q. About as far as you are from me now—15 feet?
A. I cannot exactly say; to the best of my opinion I may say as far as that.
Q. Did you look back after that and see your lines were broken?
A. I saw my lines parted before she struck.
Q. The lines were parted before she struck?
A. Yes, sir.
Q. Where were you when you saw the lines parted?
A. I was going forwards.
Q. Where were the lines?
A. On the stem of the boat.
159 Q. You looked back and saw they were parted, when you were going forwards?

A. Yes, sir.
Q. What made you think they were parting?
A. Because I heard them snap. It was my own line.
Q. Was your boat as far forward as the Scranton?
A. No, sir.
Q. Did you notice your boat's stern swing off from the Scranton, after the line was broke?
A. Yes, sir.
Q. Was that before or after the collision?
A. Before it.
Q. Are you quite sure of that?
A. Yes, sir, I am sure of it.
Q. Was there any one else on board your boat?
A. My wife.

By Mr. Van Santvoord:

Q. How stout was the line?
A. I suppose it was about a two-inch line.
Q. How long had you had it?
A. Probably I had it in the summer for two, three, or four months; the work we do is pretty hard upon our lines.
Q. Was that one much worn?
A. Oh, it was a little worn.

William Cavin, called by the claimants for the "Borden," being duly sworn, was examined by Mr. Benedict:

Q. Did you see this collision?
160 A. Yes, sir.
Q. Where were you?
A. On board the steamboat Saxe.
Q. Where was she?
A. In the middle of the East river.
Q. Coming from where?
A. From up Williamsburgh way and New York, picking up boats.
Q. Where bound?
A. To Jersey City with a tow.
Q. At the time of the collision where were you?
A. Between Catharine ferry and Fulton ferry.
Q. About the middle of the river?
A. Yes, sir.
Q. Where did you first see the Borden?
A. I saw the Borden coming along the Brooklyn shore, very close down to the Scranton.
Q. Where was the Scranton?
A. She was coming from the middle of the river, forwards of Fulton ferry.
Q. Was she before you or after you?
A. She was ahead of me.
Q. Coming from about the middle of the river, and rounding to towards Fulton ferry?

A. She came down, I should judge, nearly in the same course I did, until she turned in the middle of the river.

Q. How did you go?

A. I went straight down the middle of the river until the collision; then the Borden came off towards me, and I had to alter my
161 course.

Q. You came down about the middle of the river? Describe the way the Scranton came down.

A. When I first saw the Scranton, she was headed towards Brooklyn shore at the Fulton Ferry dock.

Q. How far out in the stream?

A. She might be 200 or 300 feet from the ferry dock.

Q. Heading in?

A. Yes, sir.

Q. How near the middle of the river?

A. All on one side then, within 300 feet of one side of the river.

Q. Within 300 feet of the pier?

A. Yes, sir.

Q. Which pier do you mean?

A. I mean the lower Brooklyn Ferry pier—Fulton Ferry slip.

Q. As I understand you to say she was heading towards the Brooklyn ferry, about 300 feet from the lower pier of Fulton ferry, do you mean, when you first saw her, she was heading in?

A. That was the first time I saw her.

Q. Describe what you saw; tell the story in your own way.

A. I was coming down the middle of the river, and saw the Scranton heading towards Brooklyn shore—Fulton Ferry dock; I then saw the Borden come up from the eastward, and then saw them come together; I should judge, when they came together, the two
162 boats were not 100 feet from the dock.

Q. You mean from Fulton Ferry pier?

A. Yes, sir.

Q. Below it?

A. Yes, sir.

Q. Did you hear any of the whistles?

A. No, sir.

Q. Did you notice whether the Scranton was or not under way at the time of the blow?

A. The engine was working.

Q. The question is whether the boat had any way on her?

A. She looked to me as though she had. But if you place one boat going towards Fulton ferry, and I am going down with the tide, that boat might appear to be going ahead, and at the same time not going ahead. But I supposed, and made the remark, that the boat was going ahead; I do not want to swear positively she was going ahead.

Q. Did you hear any hails?

A. No, sir.

Q. Do you know the water there pretty well?

A. I am pretty well acquainted with it.

Q. You have knocked about the harbor a good deal?
A. Some 35 years.
Q. What was the state of the tide then?
A. Quite changeable there.
Q. Was it ebb or flood?
A. It was ebb tide.
163 Q. When it is ebb tide there, does it run pretty strong?
A. It runs very strong down there.
Q. What is the effect upon the water which is inside?
A. The tide is stronger that runs down on the outside; if the wind is not northwest, it makes a current up, and makes it stronger and stronger; if it runs strong down the middle of the river, it sweeps down and comes up.
Q. There was not a northwest wind, then? was there any wind then?
A. Yes, sir, some.
Q. Which way was it?
A. Southwest, I think; there was not much wind.
Q. In what capacity have you been about the harbor?
A. In almost every one on board a vessel, from cook to captain.
Q. How long have you been captain?
A. I think, 23 or 24 years.
Q. Now, I want you to state if a boat is coming up as the Borden was what would be her proper course to take in that state of the tide, bound to pier 44 on the New York side?
A. To avoid difficulties we always go right over to the Brooklyn side, if possible; we get over as quick as we can to get out of the way of everything going down the river; and for another purpose, we want to gain this eddy tide as quick as possible to get up; my course would be to get close to the docks; it is the common practice
164 to do so.
Q. Did you notice the Borden as she went along?
A. I noticed, as I said before, that she was within 150 feet of the docks, or along there.
Q. She went the usual course?
A. Undoubtedly, the same course as I would take myself.
Q. How far up would you keep in the eddy?
A. We sometimes go above the ferry.
Q. How long do you keep the eddy?
A. Clear to the ferry, and turn the point of the pier, unless something gets in the way.
Q. If you were going up, a propeller towing a loaded canal boat, what would be the effect if she should starboard her helm and strike out towards the tide?
A. The effect would be to sink them and sink ourselves; the boat would turn right round; nothing to help you.
Q. You must keep your helm aport?
A. It is right that you should do so, so as to meet the tide that comes down the East river.
Q. With a strong ebb tide coming down in that way, to pick up a

boat on the lower side of the Fulton Street pier, and meeting this boat coming up within 150 feet or so of the pier, what would you say was the proper course for the boat going down to pursue, to run under her bows, or to round to under her stern?

A. I should want to give this boat coming up a good wide berth, I should want to give them at least 300 yards.

165 Q. Which way?

A. To go across their bow; I do not care how close I go under their stern.

Q. You mean that going across her bow, you would want to give her 300 yards berth?

A. Yes, sir; unless there was an understanding between me and the captain. If I could see the captain and give him any motion, or get his whistle, that he was going under my stern, then I would go close.

Q. As a regular seaman you would expect to go under her stern?

A. I should always suppose it was my duty to do so.

Q. Would there be any difficulty, under such circumstances, in the Scranton porting her helm, and going round and coming under the stern of the other boat and going in shore?

A. I should think not any, because if he ported his helm and the boat kept on her course, she would clear, of course; whenever they do that and steer away from each other, they cannot hit.

Q. Would there be any difficulty in going round under her stern in coming in shore, and picking up a boat in the pier?

A. No, sir, not the slightest.

Q. Did you see any change of course on the part of the Borden? Say whether she ported her helm or [or] not previous to the collision?

A. No, sir; I did not.

Q. You did not notice it?

A. No, sir.

166 Q. Did you see the engine of the Scranton just before the collision?

A. Yes, sir.

Q. Was it working?

A. Yes, sir.

Q. Which way?

A. It was going ahead. I made the remark at the time the engine was going ahead.

By Mr. Marvin:

Q. Whereabouts, in regard to the Fulton ferry, was the boat you were on board of, at the time you first saw the Borden and Scranton?

A. We were, I suppose, in a range of what we call Marston & Powers' wharf.

Q. And the time you first saw them, where then was the Scranton?

A. Going towards the Fulton Ferry dock, the lower side.

Q. With her head pointing in toward the dock?

A. In this way; (illustrating,) that is what I call going toward it.

Q. Whereabouts was the Borden at this time?

A. I could see the Borden between the bow and Mr. De Forest's dock, that is the first pier below.

Q. The two vessels were pretty close together, when you first saw them?

A. Yes, sir; coming close together.

Q. How far apart when you first saw them?

A. I do not think they were over a hundred feet at the outside, from their look; I could not tell exactly.

Q. You had heard the whistle from the Scranton?

A. No, sir; I do not state I heard any.

167 Q. Do you say that you do not recollect hearing whistles from either of these vessels?

A. No, sir; nor see them; we sometimes can see them when we do not hear them.

Q. Were you near enough to have heard those whistles, if they had been blown?

A. Yes, sir, undoubtedly; we could see them.

Q. Where did you come from?

A. From Williamsburgh, with part of my tow.

Q. How rapidly did you come down the stream?

A. Five or six miles an hour.

Q. If the whistles had been blown three minutes before you saw the boats, you would not have been within hearing distance?

A. I think I could have distinguished them both if I had been taking notice and heard the whistles.

Q. What were you doing on board of your boat?

A. Steering my own boat, sir.

Q. When two boats are approaching each other in the harbor, and one blows a whistle, what is it understood to be the duty of the other boat to do?

A. The intention is that he wants to go to one side, either to port or starboard.

Q. When two boats are approaching each other in the harbor, and one blows a whistle, what is it the duty of the other boat to do?

A. To go to the starboard side.

Q. What should be the answer of the other boat?

A. One whistle.

168 Q. Where either boat blows one whistle it is understood that he proposes to go to the right or starboard?

A. Yes, sir.

Q. When they are approaching in same way, and one boat blows two whistles, what is it understood to be the duty of the other boat to do?

A. To go to the port side.

Q. When two boats are approaching each other in the harbor, and one blows two whistles, what is it understood to be the duty of the other boat to do in regard to answering those two whistles?

A. He ought to answer it if he can go on that side.

Q. What should be his answer?

A. Two whistles, if he can get on that side.

Q. When a boat blows two whistles, what does the pilot intend?

A. He intends to go to the port side.

Q. He wants to intimate that he intends to go to the port side?

A. Yes, sir.

Q. That is the left side?

A. Yes, sir.

Q. When two whistles are blown on one boat, the other boat understands it in that way; understands that the boat wishes to go to the left?

A. I shall have to explain that in my own way. If I am going up to a boat, and I wish to go on the port side of her, I blow two
169 whistles. If the captain of that boat can pass to the port side of me, he will answer with two whistles; if he cannot, he will sound one, and then a long one after that, meaning that it is impossible for him to do so; that is the way we do, and the law, as I understand it, compels us to do so.

Q. If you were coming down the stream in the direction from Williamsburgh and New York, with the purpose of picking up a boat lying near the head of the south pier of the Fulton ferry, and you should observe a boat approaching you in a contrary direction, coming up, would you blow one whistle or two whistles?

A. If I thought that boat could clear me I would blow two, to find out whether he would go under my stern or not. If he did not answer me I should blow two whistles again, which the law, according to our regulations or license, gives us the right of way; the other man must answer; but if we see that we are going together we must stop the boat.

Q. With the tide on the ebb, as it was on this occasion, and you coming down in a tug-boat, to pick up a boat lying at the south side of the Fulton Ferry piers, would you round to and turn your bow up to the northward, or would you come right down and pick up the boat with your bow?

A. I should have went nearly head on.

Q. Gone to the pier nearly head on?

A. Yes, sir.

170 Q. You would not have rounded to, and pointed your head up to the north?

A. I should not; I should have went head on, with the express purpose of taking the boat by the bow, and back out; that saves the trouble of doing what you have just asked me if I would do; but in a change of the wind we do differently.

Q. With the wind and tide as it was?

A. Yes, sir.

Q. You would have come down and taken the canal boat by the bow, without changing the bow?

A. Yes, sir.

Adjourned to 11 o'clock to-morrow.

Endorsed: U. S. District Court. Irwin McCord and *al. vs.* St'b't

Joseph Johnson or Scranton, and propeller William F. Burden. Copy stenographer's minutes. May 2, 1865, pp. 79, 149. Thomas Walsh, 80; Henry Smith, 121; Patrick Slavin, 129; William Caver, 135.

171 United States District Court, before Hon. Judge Betts.

IRWIN MCCORD
vs.
ST'B'T JOSEPH JOHNSON and WILLIAM F. BURDEN.

FREDERICK A. POTTS
vs.
WILLIAM F. BURDEN.

MAY 3*d*, 1865.

172 William Cavin, recalled, examined by Mr. Benedict:

Q. You were asked yesterday if you were going in to take up this boat how would you do it; and you said you thought, a boat lying there, the right way would be to go in and take her up by the bow?

A. Under those circumstances, if there was nothing in the way.

Q. That is what you mean?

A. Yes, sir; if there was something in the way it would not do for us to run over them, or for them to run over us.

Q. You would not have done it that day under the circumstances, with our boat there?

A. In that case, if that boat was close on to me, I should have waited until that boat got behind me, or else receive an answer from them of a whistle to my whistle. It would not be for us to run over anybody because we want to pick up a boat, or to have anyone run into us.

By the court:

Q. You speak of that as a feasible way of doing it?

A. Yes, sir; on account of the tide being slack we would go in that way naturally; most all of us would do that; that would be the way if there was nothing in the way; if there was a vessel lying close by at anchor, which would block our way, I would have to go round the vessel, and come up again, and pick the boat up entirely different by the bow or stern with a hawser; but we calculate this tide to slue us down when we back off.

173 Q. If the Burden was one hundred feet below the lower ferry pier, would you think then there would be time enough for you to cut in ahead of her?

A. No, sir; I should want 300 yards, that is, if I didn't receive any response from him, and if they blew their whistle in answer to my whistle, I should make my calculation that they were going to do exactly as my vessel told me they were going to do; that is, to go under my stern, and in that case it would not make any difference how close we were as long as we were clear.

Q. Have you any idea of about the velocity of the tide there in that state of the ebb—about how fast does it run?

A. The regular tide in the East river at an ordinary, or about that time, without freshets, would be about three miles.

Q. If there was a line drawn from your boat to the Burden, on which side of that would the Scranton be when you were looking out here, on the right hand or on the left?

A. The Scranton was on the right hand of me, going to the westward.

Q. Which side of a line drawn from your bow to the bow of the Burden was the Scranton?

A. On the New York side. If she had not been I could not have seen her, because she is so low that the Scranton would hide her.

Q. That is, you would not see the Burden?

A. I could not see the Burden. The Scranton had a tow of
174 light barges, and the canal boat was within two and a half feet of the top of the water from her rail.

Q. How far out would you say the Scranton was at that time, the line from your boat and the Burden?

A. Very close.

Q. How much space would there be between them?

A. I could not imagine how much space there would be; may be I might say one hundred feet; you may say one hundred feet; but I could not come exactly to it, because we were drifting off to the westward all the time.

Q. Which is the largest boat, the Burden or the Scranton?

A. The Scranton.

Q. At what stage of the proceedings was it that she was one hundred feet outside of that line?

A. The time I saw them coming together I supposed they would naturally find each other; one was coming here and the other there; I suppose not over 100 feet, I should think; and I watched them until they struck.

Q. Is the propeller Burden tug built?

A. The Burden is a propeller.

Q. Were the canal boats that she had alongside of her pretty deeply loaded?

A. Yes, sir; as deep as they ordinarily load them coming down the Erie canal.

By Mr. Van Santvoord:

Q. Were you higher up the river than the Scranton was when you first seen the Scranton?

A. Yes, sir.

175 Q. How much higher up?

A. I should judge six or seven hundred yards. We were up between Fulton and Catherine ferry.

Q. Were you further out in the river, near the middle of the river, than the Scranton at the time you saw the Scranton?

A. Yes, sir.

Q. Did you continue further up the river, and further out in the river, after you first saw the Scranton, until you saw them together?

A. I didn't continue further up.

Q. Had you got down to the Scrantan at the time of the collision?

A. Not quite.

Q. You had not got down to the Scranton at the time of the collision?

A. Not quite. We were within, I suppose, about abreast of the upper part of the ferry about the time that they struck.

Q. And how far out?

A. Well, some time. May be from the ferry dock; that would be 500 feet out by the time we got there, because it comes to a point.

By Judge Marvin:

Q. If you were in a tug-boat coming down the river from up towards Williamsburg, and intended to pick up a boat at the south side of the ferry of the Fulton ferry, and you should see another boat approaching from the southern direction, and should incline the head of your boat in towards the pier, what ought the other boat to
176 understand by that; that you intended to stop at that pier?

A. If I was on board of the boat that was coming to pick up the boat?

Q. What ought the other boat to do if you turned in towards the pier, so that there was room for the other boat to pass?

A. That would be hard work for me to tell what she should do in one sense of the word, because there is something to alter the case. If she wanted to go along in that way and follow it up to the ferry, I could not expect her to want anything else than to go that way. I couldn't expect her to do anything else than that; but if she would give to me, it is necessary for us to sound the whistle to that effect.

Q. But when he sees you turning the head of your boat in towards the pier, dont that show him that you are going to stop, and is he not as much bound to turn out for you as you for him?

A. No, sir; because he has got the eddy tide.

Q. Suppose that you were going to stop there to pick up the boat, and you had blown two whistles, what was he bound to do?

A. If he heard me he would be bound to answer; but if he did not hear, me it would be my duty to blow two whistles more, and if I got no response from him it is my duty to blow a long whistle, so that he would be sure to hear it.

Q. According to your theory a tug-boat could never get to the pier to pick up a boat; if boats were coming up they would
177 have to be constantly turned out in the stream?

A. We do not say because we have got a boat lying at that pier that we have got a right to run over any one. If the law is on his side he has the advantage of me, but if I take the chance and run by him and escape him as a man would across a horse's head in the street, and the horse was under headway, if I escaped it is all right; but as sure as the sun is, in my way of thinking, if that man runs into me, or we come together, the court must decide who is in fault, and not me.

Q. If you had inclined the head of your boat in towards the pier, what ought the other boat to understand that you propose and intended?

A. It is just as I said before; the other boat ought to understand that he has the right of way along that eddy.

Q. What ought he to understand you to mean, turning the head of your boat in towards shore?

A. He supposed I wanted to go in there to pick up a boat, but he don't suppose that either of us is going to run right in there.

Q. He would understand that you proposed to stop there to pick up a boat?

A. Yes, sir.

Q. And if you had blown two whistles that would make him understand it so much the better?

A. If he heard them.

Q. He would then understand your purpose to stop there?

A. In that case they might blow the whistle too late.

178 Q. But if he heard the whistles, and your boat's head was pointing in towards the ferry, he ought to understand by the whistles, and the head of your boat being pointed in that direction, that you intended to stop there?

A. That was the intention of two whistles.

Q. He ought so to understand it?

A. Yes, sir, if he understood it; but he might be so close that the whistles would be of no use.

Q. Do you know the pilot of the Burden? Who was the the pilot at the time?

A. I have seen the young gentleman very frequently. I have seen him around here for some three or four seasons.

Q. Do you know how long he has been a pilot?

A. I do not, sir.

Q. If he had been a pilot some time here in the harbor would you not have known the fact?

A. I have seen him handling a boat here for a couple of years, I think.

Q. Do you know whether he has been licensed as a pilot?

A. I cannot tell; they don't require license.

Q. How long have you known him at all as a pilot?

A. I think some two years.

Q. Have you known him as a pilot on board of any other boat?

A. Yes, sir.

Q. Is he a responsible pilot?

179 A. I could not say that he was hired as pilot any further than that I saw him steer the boat the same as other parties do. He might have been hired as a deck-hand, and was acting as a pilot for all I know. In many cases our captains have men that they call pilots that are deck hands, owners of them in that way.

Q. Don't you know that this pilot of the Burden had been employed as a deck-hand on board of the Burden for a long time, or on board of some other vessel. Don't you know that he has been employed as a deck-hand, and that he was only recently employed as pilot?

A. I have only known him for four years. He has been employed as a deck-hand and pilot.

Q. Name the vessels he has been pilot of?

A. He was employed as pilot of the New Haven, a side-wheel boat.

Q. How long a time was he pilot of her?

A. I could not tell you; it was through last fall and winter. The first time I knew of him steering a steamboat was on board of a boat called the Preston, a propeller, a rather smaller boat than the Burden. He was then with the man who owned part of the boat, and whether he had acted as pilot or deck-hand I cannot tell; sometimes those steamboats only carry two men, one for a deck hand and another for what the call a helper, or you might call him pilot, because he has charge of the boat at many times; and at all times when the captain is there he has charge of her, whether he is deck-hand or pilot.

180 By Mr. Benedict:

Q. If you was coming up as the Burden was at that time, and should see a man heading in that way, you were asked on the other side if you would not suppose that they were going in there, you would suppose so?

A. Yes, sir.

Q. But you would not suppose that they were going to run over you?

A. No, sir.

Q. You would not suppose that they were going to run in there to the prejudice of a boat like yours running up with the eddy tide there?

A. No, sir; if they did I should have found fault with them very much.

Q. You have known this pilot about four years?

A. I think it is four, I won't be certain.

Q. You have known him act as deck-hand?

A. The first I have known of him frequently was on board of the Preston; he was with the captain, who owned a part of the boat, or he might have owned the whole of her, and, as I take it, he acted as a kind of pilot and deck-hand.

Q. On this craft?

A. On all those, unless they are hired as pilots.

Q. How large a boat was this Preston?

A. I guess there is not much difference in the size of the cylinder; the power is pretty nearly equal.

Q. You knew him on board of the boat with the owner of the boat?

181 A. Yes, sir.

Q. And the owner was acting as captain?

A. Yes, sir.

Q. And this man was acting as something?

A. He had charge of the boat when the captain was ashore.

Q. And when the captain was there, he was deck-hand, or something else?
A. Yes, sir.
Q. Is not that the way they act on these propellerr?
A. Yes, sir; in many cases where they are owners.
Q. Do you know anything to his predjudice as a pilot?
A. Not at all, sir; not a particle.
Q. As far as you know, is he a competent pilot?
A. I should be willing to trust him with my boat.

John Gill, sworn as a witness on behalf of Mr. Potts, and on behalf of the claimants of the Scranton, examined by Mr. Fithian:

Q. Were you captain of a canal boat in the winter of '63 and '64?
A. Yes, sir.
Q. A year ago last December?
A. Yes, sir.
Q. What was the name of your boat?
A. The Stranger.
Q. Was she on one occasion in tow of the steamboat Scranton, when there was a collision on the East river?
182 A. Yes, sir; she went under the name of the Scranton, I believe. The Joseph Johnson is her right name.
Q. Which side of the Scranton was your canal boat?
A. On the starboard side.
Q. State how she was fastened.
A. She was fastened with a stern line, a spring line, and bow line, and I think there was a backing line, but I am not positive; but there were three, anyhow.
Q. Was your canal boat longer or shorter than the steamboat?
A. I think she was a little shorter; I am not positive, but I think she was.
Q. Do you recollect whether the bow of your canal boat was near to the bow of the steamboat, or back from the bow of the steamboat?
A. To the best of my opinion she was little back of the bow, not more.
Q. Did the stern of your canal boat come as far back as even with the stern of the steamboat?
A. I cannot tell that. I did not take any notice.
Q. But pretty near, probably?
A. Pretty near, I expect.

By the court:

Q. Were the lashings so as to keep her firm in that position?
A. They always spring a little. The lines spring a little, but not to say anything of consequence, when they are made as tight as we can.

Q. Where was the Scranton and your boat in the river when
183 you first saw the propeller coming up the river?
A. I was down below in a little place that we lived in; we

A. I have only known him for four years. He has been employed as a deck-hand and pilot.

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Q. Where was the Scranton and your boat in the river when
183 you first saw the propeller coming up the river?
A. I was down below in a little place that we lived in; we

call it a cabin; and when the Scranton whistled I came up on deck, and the Scranton happened then to have her bow on the Brooklyn shore.

Q. You say you heard the Scranton whistle?

A. Yes, sir.

Q. How many whistles?

A. Two.

Q. Are you confident of that?

A. Yes, sir.

Q. You immediately came on deck when you heard those whistles?

A. Yes, sir.

Q. You saw the Scranton was heading in towards the Brooklyn shore?

A. Yes, sir.

Q. Does your recollection answer you to tell how far out from the pier she was, or didn't you notice?

A. I did not notice how far out she was from the pier.

Q. Was it further than across this room?

A. I think it was; I could not make any calculation of the length which she was from the pier.

Q. How far from you was this other steamboat when you came on deck, as near as you can tell?

A. I could not positively say how far; but she appeared to be may be from five to six lengths of the steamboat, or in that neighborhood; it might be further, but it was not less than that in my opinion; to the best of my opinion and belief it was not further than that.

184 Q. In what direction was the Burden then going?

A. The Burden appeared to be going towards the Fulton ferry, coming up that way.

Q. Along the Brooklyn shore?

A. Along the Brooklyn shore.

Q. What did you next observe, after hearing the whistles, and going on deck and seeing where those boats were?

A. When I looked at the propeller and the boat, I thought if they came on us as they were coming they would run into me about midships. I thought so by the way I looked at that, and I went along so as I could see; went from the stern of the boat forward, to about midships.

Q. Do you think now that if the propeller had continued right on as she was going when you got on deck that she would have struck you about midships?

A. To the best of my opinion, if we had stopped in the position we were in, and she kept her helm steady and ran the way she was going, that she would have come in that direction. I would think so myself.

Q. What did you see done next?

A I kept watching the propeller from that time until she came opposite my bow, and just as she passed by the Scranton, as we call her, she came against the Scranton's bow. Before she did

185 strike the Scranton she did give one little puff of a whistle,

but she was then about opposite my bow, and I was on the side next to her, and at that time it was beyond all earthly power to prevent a collision.

Q. You think the propeller was just about opposite your bow when she blew one short whistle, and then you think it was past any earthly power to avoid a collision?

A. To avoid a collision at that time when she whistled; that is my opinion and belief.

Q. Was your attention called to what the Scranton's engines were doing just before this collision occurred, or just at the time of it?

A. When I saw the propeller and the boat coming towards me it took my attention, and I got a kind of thrill when I saw her coming. I thought I was going to get struck if she came on, and I could not possibly say what the Scranton was doing at the time.

Q. You didn't pay particular attention to that part?

A. I didn't pay particular attention to that part.

Q. Did the propeller stop at all from the time you first saw her till she passed you, to your recollection?

A. To the best of my opinion and belief she never stopped nor slowed up from the time I saw her until she passed us. When
186 the Joseph Johnson struck her she appeared to be working all the power she had, to the best of my opinien and belief. I could not notice her slewing up or stopping.

Q. Now, tell a little more particularly, if you can, in what way the propeller struck the Scranton.

A. She was crossing her bow, and the bow of the Johnson struck her some place in the neighborhood of midships; it might have been near the other end. I did not take particular notice till she passed on.

Q. Did you notice whether the propeller was sheered in? and if so, which way when they came together?

A. That I could not say anything about, but it appeared that the Scranton or Johnson was going in towards the Brooklyn shore.

Q. That was before the blow?

A. That was before the blow; and it appeared that the propeller kept her helm aport, and sheered in towards the Brooklyn shore; but when she kept on that way she was keeping all the time in the Scranton or Johnson's way. If she put her helm starboard it might have avoided it.

Q. When you first came on deck, after the Scranton had blown her two whistles, was anything in the way to prevent the propeller starboarding her helm and going under your stern?

187 A. To the best of my judgment and belief there was not.

Q. You didn't see anything to prevent it?

A. I saw nothing. If she had either stopped or went round the Scranton's stern, I think, to the best of my knowledge and belief, it would have avoided the collision. That was my opinion at the time, and it is now.

Q. Did you notice the steamboat's bow?

A. I don't think I did. I think I noticed it was battered on the

bow, but that almost escaped my memory, for I hardly kept it in my memory. I did not think I ever would be called on, it is so long ago.

Q. I want to understand that, when this collision occurred, you were standing on the bow of your boat?

A. Yes, sir.

Q. And you could see the whole of the propeller Burden as she came along?

A. Yes, sir; I was standing on the bow of the boat.

Q. Did you notice the parting of your stern lines, or how was that in reference to your boat?

A. I disremember anything about that.

By Mr. Van Sant Voord:

Q. Did you come up on deck as soon as you heard the whistle?

A. Yes, sir, or very shortly after. I could not say it was on the minute, but it was shortly after, for we always look out when we hear the steamer's whistle.

188 Q. When you came up did you go directly forward on your boat?

A. I did not go forward that time till the propeller came near me; but as the propeller was coming near me, I kept going forward a little, and when she was coming up pretty close I got up on the bow. I did not let my eye off her from the time I came up until she struck.

Edward Morris, sworn on behalf of Mr. Potts. Examined by Mr. Fithian:

Q. What is your age?

A. Twenty-two.

Q. What is your occupation?

A. Steamboating.

Q. How long have you been steamboating?

A. A little over four years.

Q. In what capacity have you been engaged steamboating?

A. As a deck-hand and wheelsman; a pilot at the present time.

Q. How long have you been a wheelsman?

A. I should think very near a year.

Q. How long have you been accustomed to steering boats?

A. I went to sea before I went to steamboating.

Q. How long were you at sea?

A. Very near three years.

189 Q. And for the last four years you have been engaged in steamboating all the waters of New York?

A. Yes, sir.

Q. Are you familiar with the harbor of New York?

A. Yes, sir.

Q. And the boats in the harbor?

A. Yes, sir.

Q. State if you were on board at the time of this collision with the Burden, spoken of in this case; and if so, what were you doing on board of the Scranton?

A. I was wheelsman at the time.
Q. Were you at the wheel?
A. Yes, sir.
Q. Anybody else with you, assisting you at the wheel?
A. Yes, sir.
Q. Who?
A. The captain.
Q. Where was your boat when you first saw this propeller tug, the Burden?
A. Off of Marston & Powers'. I don't know that I was exactly abreast, but very near.
Q. Marston & Powers' is where?
A. Just above Fulton ferry.
Q. On the Brooklyn side?
A. Yes, sir.
Q. The distance above you don't know; or do you?
A. It was just above the ferry, the next dock above.
190 Q. At the time you were in that position, off of Marston & Powers' dock, above Fulton ferry, whereabouts was the propeller at the time you first saw her?
A. Down at DeForest's stores.
Q. Where are DeForest's stores?
A. I think 5 or 6 lengths below Fulton ferry.
Q. Five or six lengths of what?
A. Of my boat.
Q. You don't know these distances with any accuracy?
A. No, sir.
Q. What was done on board of your boats?
A. The captain told me to heave my wheel astarboard.
Q. Did you do so?
A. Yes, sir.
Q. What was the effect of that?
A. To throw her head on shore.

By the court:

Q. Did she have a perceptible motion?
A. Yes, sir.
Q. You noticed that she got the motion of head in shore?
A. Yes, sir.
Q. She responded to the wheel?
A. Yes, sir.
Q. Does your boat respond pretty quick?
A. Yes, sir.
Q. What next did you do?
A. The captain slued her down.
Q. What next did you do?
A. The captain blew his whistle twice.
191 Q. How confident are you?
A. Because I seen him do it and heard him.
Q. Heard the whistle and seen him do it?

A. Yes, sir.

Q. Now, at the time the whistle blew, how far off was the Burden do you think?

A. I could not say exactly how far she was.

Q. Did you hear any response from the propeller?

A. No, sir, I did not.

Q. What next did you do after you had slowed and starboarded your helm so that she had rounded head to the dock and whistled twice?

A. Stopped her.

Q. How did you stop her?

A. By ringing one bell.

Q. Do you know that that bell was rung?

A. Yes, sir,

Q. How do you know?

A. I seen it rung.

Q. Did you get an answer from the engineer?

A. Yes, sir.

Q. Did the engine stop?

A. Yes, sir.

Q. Then what next did you do?

A. Rang two bells to go back.

Q. How do you know you rang two bells to go back?

A. I seen the captain ring them.

Q. Did you get any response from the engine?

A. Yes, sir.

192 Q. Did you see the engine answer these bells?

A. No, sir; I did not see her.

Q. How do you know that the engineer is doing what you told him to do?

A. Because the backing lines parted and the stern lines.

Q. Is there any other way you know of that the engineer obeys your orders? Do you tell from the motion of the boat, or anything of that kind?

A. I tell by the boat going back.

Q. How do you know he obeyed your order in this case?

A. Because the backing and the two stern lines parted.

Q. How long should you think it was before the boats came together that the two bells to back were rung?

A. I should think it was 15 or 20 seconds.

Q. You had been on that Scranton, how long?

A. I could not say how long.

Q. About how long had you been on her then?

A. I should think two or three months.

Q. She was running about the harbor all the time, stopping and going ahead.

A. Yes, sir; we ran to Elizabethport.

Q. State whether, in the condition she was when you got the bells to back her, whether from your knowledge of her engine, handling her backwards and forwards, she could have been made to go back

before the collision. Do you think there was time enough for her to have got stern way before the collision?

A. Yes, sir.

193 Q. You think there was time enough, and you think she actually had stern line at the time of the collision?

A. Yes, sir.

Q. Now, do you remember whether the stern lines of both boats were parted or not?

A. I won't say for certain. I am certain one of them parted.

Q. Did you hear it part?

A. No, sir.

Q. Did you see it?

A. No, sir.

Q. How do you know they parted?

A. The boat's head was swinging to us.

Q. If you were going astern, and the stern line parts, the effect of it is to swing the bow of the canal boat right in on you?

A. Yes, sir.

Q. Could that happen if you were going ahead?

A. No, sir; that is, if there were no stern lines out.

Q. If you were fast by the bow, of course it would not?

A. Yes, sir.

Q. But is there anything to part your stern lines when you are going ahead?

A. There is a small stern, I think.

Q. Enough to part them?

A. No, sir.

Q. Suppose, when the captain of the Scranton blew his two whistles that the propeller had put her helm to the starboard, was there any difficulty in her passing astern of her?

194 A. No, sir.

Q. State if the propeller changed her course any, to your knowledge.

A. Yes, sir; she hauled her head in towards shore more.

Q. Did you hear the propeller blow a whistle at any time?

A. Yes, sir.

Q. When did she blow?

A. When she was right on top of us; when she came to us.

Q. State what kind of a blow it was that the canal boat struck the Scranton, whether it was a dead square blow, or whether it was a glancing blow.

A. It was a glancing blow.

Q. What was the effect of the blow upon the Scranton?

A. It slued her stern round sideways.

Q. Which side?

A. The port side, sir.

Q. Did you see how much of the stern it took off?

A. No, sir; I don't remember now.

Q. Do you know the man that was steering the Burden?

A. Yes, sir.

Q. What was his name?

A. Benjamin Fisher.

Q. Do you know anything about whether he was an old man or a young man?

A. I should judge he was a man about 25 or 26 years old.

195 Q. Do you know how long he had been employed on the Burden?

A. No, sir.

Q. Had you known of his being employed on any other boat; and if so, in what capacity?

A. Yes, sir; two boats.

Q. When? How long before that collision?

A. I should judge about eight or ten months.

Q. What capacity or position on those two boats had he had?

A. Deck-hand.

Q. Do you know what he had been doing for the last six or eight months before this time, when you came in collision?

A. I think he was sailing a sloop.

Q. Had you ever known him to be employed as a wheelsman or pilot on board a steamboat or tug before this time that he was steering the Burden?

A. I have seen him steering a vessel around the harbor.

Q. Do you know what position he was employed in on the Preston?

A. He was hired as deck-hand; but whether he had charge of her afterwards I could not say.

Q. He was not the pilot of the Preston, was he? or do you know how that is?

A. I don't know how that is; the owner of her used to go on her sometimes.

Q. Did you notice whether the propeller continued right on without stopping or not, before the collision took place?

196 A. I don't know whether the boat was working ahead or not, but the canal boat didn't stop; but I could not tell whether the engine was working.

Q. How about the motion of the canal boat, or of the propeller, did they stop her headway?

A. She went right by us.

Q. Did she continue on; and if so, in what direction?

A. She continued over towards New York.

Q. Did she change her course after she got by you?

A. Yes, sir.

Q. How quickly?

A. She doubled right round us.

Q. Now, suppose she had not changed her course, but had continued in the course she was on when she struck you, where would she run to?

A. Right up along Brooklyn shore.

Q. Could she have cleared the Fulton Ferry dock if she had not changed her course?

A. No, sir.

(Objected to.)

Q. Now, you say that just before she came in collision with you, she put her helm hard aport and threw her head in shore?

A. Before she struck us.

Q. I want you to understand that I am asking so that you will answer intelligently, according to the fact, which ever way it is.

197 You say that before she came in collision with you, the Burden put her helm aport and threw her head in towards the Brooklyn shore?

A. Yes, sir.

Q. Suppose she had kept right on in that direction, would she have struck anything; and if so, what?

A. She would have struck the dock.

Q. Then, I understand you to say, that in order to clear the dock it was necessary, after she got by you, to throw her head out in the middle of the river, and that she did that?

A. Yes, sir.

Q. Supposing, when you were coming up there, at about the time the propeller put her helm aport to throw her head in shore, suppose she put her helm starboard, and threw her head the other way, would she have passed astern of you and cleared your boat?

A. Yes, sir.

Q. And there would have been no collision?

A. No, sir.

Q. Was there a vessel, or anything, in the way to prevent her from taking that direction?

A. No, sir.

Q. When Capt. Walsh blew the two whistles, what did you suppose that the other one would understand by that?

A. To go under our stern.

Q. Do you know whether Capt'n Walsh and you, as the steersman, supposed that she would go under your stern?

198 A. Yes, sir.

Q. As soon as you discovered that she was not going under your stern did you make all the efforts that you could to stop your boat?

A. Yes, sir.

Q. Do you know of anything now that you could have done to avoid that collision, after you had discovered that the Burden was not going under your stern, than what you did do?

A. No, sir.

By Mr. Benedict:

Q. You were wheelsman on this boat, were you?

A. Yes, sir.

Q. Who was pilot?

A. I had been pilot before that.

Q. Who was pilot of this boat?

A. Capt. Walsh.
Q. No other pilot?
A. No, sir.
Q. You were the wheelsman?
A. Yes, sir.
Q. Do I understand you to say that the Burden ported her helm?
A. Yes, sir.
Q. Did you see her sheering towards the shore?
A. Yes, sir.
Q. Did you see her starboard her helm so as to go out into the water?
A. What do you mean?
Q. You say she ported her helm?
A. Yes, sir.
199 Q. Did you see her go the other way before the collision?
A. No, sir; I didn't.
Q. She kept going to port till after the collision?
A. Yes, sir.
Q. You are quite sure of that?
A. Yes, sir.
Q. Did you keep your eye on her all the time?
A. No, sir.
Q. You didn't see her all the time?
A. No, sir.
Q. Up to the time of the collision?
A. No, sir.
Q. What were you looking at?
A. It was my duty to look out for the wheel; I was wheelsman and placed to steer her.
Q. Your business was to look at the wheel?
A. Yes, sir.
Q. And attend to it?
A. Yes, sir.
Q. It was only a casual glance that you gave to her?
A. Now and then I looked at her.
Q. How long do you think it was from the time you first saw the Borden before the collision?
A. I could not say exactly.
Q. Can you give us any idea of it?
A. I should think it was three or four minutes.
Q. I think you said you saw her down by De Forest's dock?
A. Yes, sir.
Q. And then you were how far up?
A. We were up at Marston and Powers'?
200 Q. I think I understood you to say you thought your boat had stern way on at the time of the collision?
A. I think she had very little.
Q. Explain how, when our boat was going towards the Brooklyn shore on her port wheel, as she was all the time, and your boat was backing off and had stern way, going towards the New York shore, explain how they came together.

A. The wheel was to port before she came to us.

Q. But you say she was going all the time towards the Brooklyn shore on a port wheel, so that if she had kept on, she was constantly bearing to the right, and they were under sternway and going off towards New York; in that case how were you going to get together so as to smash up?

A. If he threw his head in dock, and swung his stern out.

Q. Is that all the explanation you wish to make?

A. That is all the explanation.

A. Were you not looking astern a good deal of the time?

A. No, sir.

Q. Which way did you set with your face?

A. Forward.

Q. You did not see the stern lines part did you?

A. No, sir.

Q. All you know about the parting was that you saw the bow rather coming round?

A. Yes, sir.

201 Q. You say the capt'n slowed her off?

A. Yes, sir.

Q. Do you know enough about an engine to tell me how they slow her off?

A. Yes, sir.

Q. How do they do it?

A. They shove the thottle valve up; generally on tug boats, when we ring the bell to slow her, they generally shut it off very close.

Q. And the goes a little slower?

A. Considerably slower.

Q. But it is only a stopping of the engine, it don't stop the boat?

A. The boat keeps on slower.

Q. When you slow the boat, that simply stops her headway some?

A. Yes, sir.

Q. Then you stop the engine entirely, don't you, if you ring to stop?

A. Yes, sir.

Q. And if you ring two bells to back, then you back the engine?

A. Yes, sir.

Q. So that the process is three?

A. Yes, sir.

Q. And one is simply to slow the engine?

A. Yes, sir.

Q. If you are making twenty revolutions you would slow her to make fewer revolutions?

A. Yes, sir.

Q. How long was it before the collision when you slowed?

202 A. We slowed as soon as I threw my wheel over to starboard.

Q. Then how long before you stopped?

A. It was a very short time.

Q. Between slowing and stopping very short?

A. Yes, sir.
Q. Then how long before you backed?
A. Very shortly after that, sir.
Q. The whole thing was short, was it not?
A. Yes, sir.
Q. You had nothing to do with fastening your boats?
A. Sometimes.
Q. Did you at that time?
A. I don't remember whether I had or not.
Q. Can you tell whether these canal boats which you had were fastened close, tight, and snug, or whether the ropes were a little slack?
A. I think they were fastened properly alongside.
Q. Was there a little spring or slack in the line?
A. I don't remember.
Q. Any conversation between you and the captain, when you were there during these three or four minutes?
A. Yes, sir.
Q. What conversation?
A. The captain asked me whether the man was trying to go to.
Q. What did you tell him?
A. I didn't tell him nothing, sir.
Q. At the time of the collision the Burden was heading a little in shore; is that so?
203 A. Yes, sir; a very little.
Q. And the Scranton was coming on, heading a little forward; is that so?
A. Yes, sir.
Mr. Benedict: They came together, the Scranton glancing a little forward?
Q. Striking about amidships of this boat?
A. Very near amidships.
Q. You have known Fisher two or three years?
A. I didn't know him two or three years then.
Q. When did you first know him?
A. When he went on a tug boat called the Washington; I think that was eight or ten months before the collision.
Q. You knew him when you were on the Preston?
A. Yes, sir.
Q. You said when he was on the Preston the owner was sometimes on her?
A. Yes, sir.
Q. When the owner was not on board, who did have charge of her?
A. I have seen Fisher steering her, but I don't know whether he had charge of her or not.
Q. Was the owner there then?
A. I could not say, sir.

By Judge Marvin:

Q. Are you a pilot of this tug-boat now?
A. At the present time; yes, sir.

Q. How long have you been a pilot?

A. I had charge of a boat before I went on the Scranton.

204 Q. Since then?

A. Yes, sir; since last April.

Q. Are you licensed?

A. No, sir; I am about getting my papers now.

Q. But you have been a responsible pilot on board of a vessel for a year past?

A. Yes, sir.

By Mr. Van Santvoord:

Q. When did you first observe that the stern line to one of the barges was broken?

A. When he rung to go back.

Q. Did you notice it until after the boats had come together.

A. I noticed they parted before they struck.

Q. You say you didn't hear it?

A. No, sir.

Q. You didn't see it?

A. No, sir.

Q. Until after they struck?

A. I seen it before.

Q. Did you see that they had parted before?

A. Yes, sir; I judged by the boat's head coming on to us?

Q. You didn't see the lines at all?

A. No, sir.

Q. What did you see?

A. I saw the boat's head coming on to us.

Q. That is all you did see before the collision, in reference to the parting of the lines?

A. Yes, sir.

205 Benjamin Tilson, sworn on behalf of Mr. Potts.

Examined by Mr. Fithian:

Q. Are you a ship-carpenter?

A. Yes, sir.

Q. Did you repair the steamer Scranton from an injury received in a collision about a year ago last winter?

A. Yes, sir.

Q. Describe to these gentlemen, as fully as the facts are, what that injury was, and how it appeared to you before you repaired it.

A. The stem was broken about four feet from the top of the deck, below the deck.

Q. That is, it was not broken from the deck four feet down, but from a point four feet below the deck it began to be broken?

A. No; the main blow was four feet below the deck, down the stem.

Q. How much of the Scranton's stem was torn off?

A. It was about two feet in length that was broken; that is, perpendicularly.

Q. How much of a stem piece had the Scranton on—what is the depth of it?

A. I think, if I remember right, it was fourteen or sixteen inches. The stem was all in one piece, and it ran clean into the apron. Usually they raise a false apron on it, but this was all one stem.

Q. Two feet of that was broken off, up and down?

206 A. Yes, sir.

Q. How far into the apron?

A. It was broken clean into the wood ends; and the stem goes in about three inches from the wood ends to the apron.

Q. It was broken to the wood ends, or beyond it?

A. Just about to the wood ends.

Q. Describe the appearance of the stem as it came to you broken; whether it was splintered, as if it had received a perpendicular blow, or whether it was broken off, as if it received a bruised blow.

A. It was knocked off to the port side; knocked round, not clear off.

Q. Was the piece hanging; and, if so, how?

A. Yes, sir; it was hanging there. It was held on by a piece of copper.

Q. Were the planks started in any way?

A. No, sir.

Q. Did you repair her?

A. Yes, sir.

Q. How long was she in the dock?

A. Four days.

Q. Supposing that to have been the stem piece, did you notice whether the principal bruise upon the piece that was knocked off was in the front or on the side of it; or did you have your attention called to it?

A. The bruise, of course, was in front; but the stem was knocked off on one side.

Q. I want to get at the idea; if the stem was knocked round

207 that way, whether it was done by a glancing blow from that direction, or whether it was by a square blow, doubling it round?

A. It was a blow from the starboard side, knocking her stem over to port.

William Burns, sworn on behalf of Mr. Potts.

Examined by Mr. Fithian:

Q. State if you were a deck hand on board of the Scranton at the time of the collision.

A. I was a deck-hand.

Q. At the time those two vessels came together?

A. Yes, sir.

Q. Now, shortly before the boats came together, whereabouts were you on the boat?

A. Forward.

Q. Do you remember whether you were on the starboard or port side of the vessel forward?

A. I was about amidships on her, standing under the pilot-house.

Q. When do you recollect first seeing the little propeller that was coming up with the canal boats in tow? where was your boat when you first saw her?

A. They were pretty close when I first saw her. There was a light boat alongside of my vessel.

Q. Before you first saw the little propeller coming up, and before they got so close, had the Scranton blown her whistles?

208 A. Yes, sir.

Q. How many whistles did she blow?

A. Two.

Q. Are you sure of that?

A. Yes, sir.

Q. Did those whistles cause you to do anything—to look out, or anything?

A. No, sir.

Q. How far off was the propeller Burden from you when you first saw her?

A. I couldn't say; they were pretty close when I seen her.

Q. Which way was the Scranton heading when you saw her?

A. Heading in towards the Brooklyn shore.

Q. Had the Scranton slowed her engine before you first saw the propeller Burden?

A. Yes, sir.

Q. What can you say as to whether the Scranton was going ahead or backing, when the two boats came together?

A. I cannot say.

Q. Have you any recollection on that subject?

A. No, sir.

Q. I ask you if you recollect whether the Scranton was going ahead or not when the boats were coming together?

A. I don't recollect it.

Q. What were you looking at shortly before the boats came together?

A. I don't know; I was not looking at anything particular.

209 Q. Did you see the Burden before they came together?

A. Yes, sir.

Q. Did you see any danger of their coming together, or did you notice that?

A. I noticed they were going ahead, and I thought they would hit slightly.

Q. Did you notice which way the Scranton was heading when the boats came together?

A. She was bearing in towards Brooklyn a little.

Q. Did you notice whether the propeller stopped or not?

A. No, sir; I didn't take any notice.

Q. You know whether she stopped and stood still, or went on after the collision?

A. She went on.
Q. Did you notice her stop before the collision?
A. I didn't take any notice; she might have stopped and she might not, for all I know.

By Mr. Benedict:

Q. Where did you say you were standing?
A. Forward.
Q. Right on the pilot-house?
A. Yes, sir.
Q. Was the pilot-house a little upon her?
A. Yes, sir; a double-deck boat.
Q. The boats that you had in tow were light?
A. Yes, sir.
Q. Did they stand higher than your deck?
A. Yes, sir.
Q. So that you could not well see over them?
A. Yes, sir.
210 Q. So that you could not much, except direct ahead.
A. I could see ahead, and that was all.

Capt'n Walsh, recalled on behalf of Mr. Potts, examined:

By Mr. Fithian:

Q. You say you have been a pilot for some 16 or 17 years. I will ask you when two boats are approaching each other from opposite directions, and one of them rounds to, so as to head in towards the dock or pier, what has the pilot of the other boat a right to suppose from that—what should he suppose from that motion of your boat?
A. To go under the stem.
Q. What would he suppose you were going to do?
A. He would suppose I was going in there. By heading in he would naturally go under her stem.
Q. If you were on a boat, and seen another boat coming down towards you, and then turning and heading in, what would you suppose she was going to do?
A. I would suppose he was going to land her.
Q. What would you do if you were on the other boat?
A. If I could not clear him I should sheer off.
Q. You would either go under their stem or stop your boat?
A. Yes, sir.
211 Q. Suppose that this Burden, at the time you blowed your two whistles and put your helm astarboard to head your boat in, suppose she had put her helm astarboard, what would be the effect of that?
A. She would have went clear of us.
Q. On which side of you?
A. She would have went astern of us.
Q. You heard the testimony of Capt. Gill, did you, who was the captain of the canal boat on your starboard side, in reference to where the propeller would have struck him if she had continued on her course without parting her helm?

A. Yes, sir.

Q. Now, if at the time you began to back your boat, and at the time you seen the pilot of the Burden heave her helm hard over to port, supposing he had not hove it hard aport, but came right on, where would he have struck you?

A. He might have come into midships.

Q. He would have come into you somewhere?

A. He would have come in aft on me, somewhere about the wheel. The wheel is pretty well aft on the boat.

Q. Suppose that about the time he put his wheel to port he had stopped and backed his engine, what would have been the result then?

A. That he would come alongside of us.

Q. And would there have been any collision?

A. No, sir; there would have been a kind of a jar.

Q. The boats would have rounded to side by side?

A. Yes, sir.

212 Q. Now, what sort of a steam whistle have you, in regard to its appearance; is it to be seen?

A. It is about level with the top of the pilot-house, aft. It goes up pretty high, so as to blow the steam over the pilot-house.

Q. Tell whether or not the blowing of the steam whistle shows anything to the eye?

A. Yes, sir; it shows a puff up, and blow again and another puff comes up.

Q. Supposing you were looking at a steamboat that was blowing off her whistle, and you didn't hear the whistle, could you still see that she was whistling by the steam?

A. Yes, sir; that is very often the case.

Q. You can understand by that?

A. Yes, sir.

Q. Did you suppose, when you had blown your two whistles, and turned your steamboat's head in, that the pilot of the Burden had understood your signals and would go to your stem?

A. I did.

Q. How near to you was he when you saw that there was likely to be some mistake about it, or that there was danger of your collision?

A. He was pretty close on to me; when I saw that he was coming in, hugging inside of me, I commenced to back.

Q. From that time, you saw that he was not going to observe your signal that you had given him to go outside. Is there any-

213 thing that you can conceive of that you could have done to avoid that collision that you didn't do?

A. I could not see anything; I done everything that laid in my power.

Q. If he had done the same thing that you had done, is it your opinion as a pilot that there would have been no collision and no damage?

A. Yes, sir.

By Mr. Benedict:

Q. Suppose when he ported his helm you had ported yours, what would have been the effect?

A. That would have been worse yet.

Q. Why?

A. He would have went straight on them.

Q. When he first ported his helm, suppose you had ported yours, what would have been the effect?

A. When I first saw him port his helm he was right on to me.

Q. Suppose you had ported your helm instead of starboarding it, what would have become of you? Would there have been any collision?

A. I don't suppose anything about it, because I blowed my whistle? Question repeated.

A. I would have run his vessel down, or he would have been into me.

Q. Where were you when you starboarded your helm?

A. I was just above the ferry.

214 Q. Do I understand you as intending to swear that when you were above the ferry and starboarded your helm, if you had ported it, you would have run her down? do you mean to swear that?

A. No, sir.

Q. You would have cleared her?

A. No, sir.

Q. Then you would have run her down after all; which way will you have it?

A. I could not tell how he would have acted.

Q. If he had acted just as he did, ported his helm and went in shore?

A. I don't know what he might do.

Q. Suppose you ported your helm instead of starboarding it, what would have become of you? would there have been any collision?

A. I could not do that, because I blowed two whistles.

Q. Cannot you starboard your helm when you blow your whistle?

A. It was astarboard.

Q. Clear astarboard?

A. Not clear astarboard.

Q. Did you ever put it astarboard?

A. Yes, sir.

Q. When you put that wheel to starboard, suppose you had put it to port, would there have been any collision?

A. I would have went outside, but then I blowed two whistles to go inside.

Q. All I want to know is, if you had ported your helm when you starboarded you would have gone outside?

215 A. Yes, sir.

Q. Where were you when you starboarded your helm?

A. We were a little below Marston & Powers'.

Q. Where were you when you starboarded your wheel?

A. I was below Marston & Powers' dock, and above the ferry; that is about it.

Q. Did you ever take up the tow you went after?

A. Yes, sir; I took it out and put it back again, because there was no captain on the boat.

Q. When did you take her out?

A. Right then.

Q. After this collision, you stated the Burden went off right away?

A. Turned right round and went over to New York.

Q. What did you do the first thing?

A. I started my boat ahead and picked up the boat.

Q. Did you start your boat ahead with these two canal boats swinging round?

A. They lay about so that when I started up they came alongside and I fastened them.

Q. How far did you go to get in there?

A. I made one revolution and went in there.

Q. You mean to say you fastened this boat while you made one revolution?

A. Yes, about that; not in an instant; it took a minute or two or three to take the lines out.

Q. That was after you got in?

A. Yes, sir.

216 Q. While there you fastened the stems of the canal boats to you, and took up the other boat?

A. Yes, sir.

Q. You did not take her out.

A. No; I started her out, and then dropped her, and let her go back again.

Q. Did you back off from our boat after the blow?

A. I backed until she went by, and then started ahead.

Q. There was a time when you had your nose right into our boat; did you back off, or did she back from you?

A. We backed away.

By Mr. Marvin:

Q. At the time you blew these two whistles, if the pilot of the Burden had put his helm to the starboard, would there have been any collision?

A. None, sir.

Q. If at the time you put your helm to the starboard he had put his to the starboard, would there have been any collision?

A. No, sir.

(The claimant for the Johnson rests, with the understanding that they can put in the testimony of two witnesses.)

The claimants of the "Burden" call George Arnold, who, being duly sworn, was examined.

By Mr. Benedict:

217 Q. Were you captain of the Burden?

A. Yes, sir.

Q. How long had you been captain of her?
A. She was a new boat; I had been on her about three months, all that she had run.
Q. Had you ever been master of any other boat?
A. Yes, sir.
Q. What one?
A. The G. H. Starbuck.
Q. How long had you been master of her?
A. Three years.
Q. About this harbor?
A. No, sir; in Troy.
Q. How long in this harbor?
A. She ran here in the winter time, and in the summer up the river, I believe, 3 or 4 months in the harbor here.
Q. Where did you come from with the Burden and her tow?
A. From the Atlantic basin.
Q. Bound over to where?
A. Piers 45 and 46, between the two piers.
Q. How did you come up?
A. Up along the Brooklyn shore.
Q. What tide?
A. Ebb tide.
Q. How came you to keep along in shore?
A. To keep out of the current in the eddy tide.
Q. Where did you first see the Scranton?
A. I was on deck.
218 Q. Where was your vessel?
A. Just above the Wall Street ferry, between that and Fulton ferry; probably a pier or two above Wall St. ferry.
Q. Pretty well in shore?
A. Yes, sir; 150 feet from the end of the pier, probably not over 100 feet; we might have been 100 or 150 feet.
Q. About what speed had you going up there?
A. Going very slow against the tide; we were going about two miles, and in the eddy tide going faster.
Q. What speed had you in the eddy tide?
A. I cannot tell how fast we were going, not very fast.
Q. Was the canal boat you had alongside loaded?
A. Yes, sir.
Q. Pretty full?
A. Yes, sir; six feet of water.
Q. About how far above water?
A. About 2½ feet from deck.
Q. When you first saw the Scranton where was she?
A. Up at Marston & Powers'; I should think pretty near the middle of the river when I first noticed her.
Q. Did you do anything?
A. I stood there and watched her.
Q. How far were the two boats apart?
A. I do not say; quite a distance.

Q. Who was looking out on your boat?

A. I was looking out.

219 Q. Where did you stand?

A. I stood about a quarter of the way from our bow—aft.

Q. What were you doing besides looking out, anything?

A. No, sir.

Q. Did you give an attentive look-out?

A. I did; I was looking up the river all the time.

Q. When did you first think that there was to be a collision?

A. Not until he began to round to.

Q. Tell what he did?

A. When I saw him he was up about Marston & Powers'. I then thought he was going to keep down along the middle of the river, and as we got closer up, he rounded to towards the shore, and as soon as he began to round to my pilot blew one whistle as soon as he saw he began to round to.

Q. Was there any answer to it?

A. No, sir.

Q. Then what?

A. They partly stopped their engine and then worked ahead again, and she worked ahead until she hit the canal boat.

Q. When you saw him rounding to, and you thought he was coming towards you, where were you on your vessel?

A. We were probably 200 or 250 feet below Fulton ferry, lower dock.

Q. Still in shore?

A. Yes, sir; about 100 feet perhaps, or more.

Q. In the eddy tide?

A. Yes, sir.

220 Q. Did you do anything with your wheel wheen you saw him coming?

A. I was not in the pilot-house.

Q. Did you notice whether you changed your direction any?

A. No, sir; we did not alter our course any.

Q. You kept right along?

A. Yes, sir.

Q. Was there any hail?

A. Yes; my pilot hailed the pilot of the Scranton to know if he could not go on without running into us.

Q. Where was that?

A. Before the Scranton struck, perhaps a minute before. I cannot tell exactly; he wanted to know if they could not go on without running into the canal boat.

Q. What reply did he make?

A. I do not know whether he said anything or not.

Q. What could you do to prevent the collision?

A. All we could do was to port a little and sheer in shore; we were in an eddy tide.

Q. Suppose you had starboarded your helm, what would have been the effect?

A. We would have run right into the Scranton's side if we had starboarded.

Q. Suppose you had before that gone and starboarded your helm?

A. If we had starboarded before below the ferry, we might have gone across, but when they sheered round we had not time
221 enough.

Q. The ebb tide ran pretty strong?

A. Yes, sir; it was about half tide and ran very strong.

Q. Suppose you had starboarded your helm so that the bow of the canal boat you had alongside caught the ebb tide, what would be the effect?

A. We would wheel short round.

Q. How fast were you going, do you think, at the time of the blow?

A. We had stopped our engine before we blew our whistle.

Q. Had you much headway then?

A. No, sir.

Q. Did you hear any whistle from the Scranton?

A. No, sir.

Q. Did any one on board of your boat, as far as you know, hear any?

A. No, sir; I stood right forward, and would hear it as quick as any one.

Q. Where were you standing at the time of the blow?

A. In front of the steamboat Scranton, on the port side of the propeller.

Q. Did you see the blow on the canal boat?

A. Yes, sir; it was a kind of smash, cut in, and drove one part inside of the other.

Q. So as to leave quite a gap?

A. Yes, sir; cut it right through so that the water ran in.

Q. Did you hear the account of the witness who testified
222 that it struck her as it were on the end of deck beams, and shoved out the other side while it shoved in this?

A. Yes; it sprung the boat some.

Q. Would there have been any difficulty in the Scranton if she had ported her helm a quarter of a minute before this collision, passing; what would have been the effect; would she have cleared you?

A. If she had ported instead of starboarded she would have gone clear of us.

Q. If they had ported instead of starboarded where would they have gone?

A. I cannot tell how far from us; some boats feel their wheel much easier than others.

Q. Was there anything to prevent her going under your stem?

A. No, sir.

Q. Nothing in the way?

A. No, sir.

Q. Anything in the navigation to make it dangerous?

A. No, sir.

Q. Perfectly easy to round to or go under your stem?

A. Yes, sir.

Q. Was there anything in the way of porting her wheel in going out in the stream there?

A. No, sir; nothing in the way; no vessel at all.

Q. When the Scranton was coming down, was she coming from outside in towards you?

223 A. Yes, sir; she was out near the middle of the river when I first saw her.

Q. At a later period, after she got down a little before the collision?

A. We were in shore from her all the time she was coming in this way, (illustrating.) I thought from the looks she was going under our stem; I did not think she was going to come round to go with us.

Q. What distance was there between you and the lower ferry dock at the time of the collision?

A. I should think 150 feet; there might not have been over 100 feet.

Q. 100 or 150 feet?

A. Yes, sir.

Q. Would you, as a navigator, think it good seamanship for a vessel coming down in a tide like the Scranton to go in before you and pick up a boat?

A. No; I do not think it was safe, because the tide ran strong in the river, and where we were we had an eddy tide carrying us up.

Q. With those two tides anything might happen in 150 feet?

A. Yes sir.

Q. Is it not peculiarly dangerous where there are two tides?

A. Yes, sir; more so than in a straight tide.

Q. At the time before the blow, and up to the blow, could you tell whether the Scranton was working ahead into you or not?

224 A. Yes, sir; the engine worked ahead until she hit; I took particular pains to watch the engine myself; I mentioned it to those on board.

Q. Now, dismiss the engine; was the hull of the Scranton coming towards you or not?

A. Yes, sir, very fast; she was coming so fast that I thought she was going to come in through the canal boat, on to us, and the men on the canal boat were so much afraid that they jumped on our deck.

Q. Is it true that you ran on to her sideways?

A. No, sir; I do not know how we could go sideways; we didn't go sideways on her; I never saw a boat going sideways with a boat 90 feet long alongside.

Q. How far from the outside of the boat do you think she cut?

A. She did not cut away in through.

Q. But did she not break the side?

A. She broke the side in and cut the waterway of the boat.

Q. How far?

A. I did not measure it; I looked at it.

Q. How much was the boat crushed in, out of a straight line?

A. I did not notice particularly.

Q. Was there any jar from the blow?

A. Yes, sir.

Q. Did you feel it?

A. Yes, sir; it jarred the canal boat and us too.

225 Q. Did you notice whether it jarred the Scranton any?

A. I should think it did; it knocked a man down on deck.

Q. What man was that?

A. A man who went forward to hold a fender out; it knocked the fender out of his hand, and knocked him over the bits.

Q. Did you see it?

A. Yes, sir; I did not know the man.

Q. You saw him any how?

A. Yes, sir; I saw the man there.

Q. Was he holding a fender?

A. He had a fender in his hand, but did not get there quick enough to hold it over the bow.

Q. State on this diagram how you came?

A. Right along shore; (witness points out on diagram the course of the Scranton and where the collision occurred.)

Q. Was there any of the time when you saw the Scranton that she was heading outside of you?

A. She was when I first saw her; until she got down to our starboard wheel, she was heading outside all the time, as I judged, until she starboarded her wheel and began to swing round.

Q. How long have you known Fisher, the pilot?

A. I have known him about a month or a month and a half before the collision happened

226 Q. Have you know him since?

A. Yes, sir, ever since; I have seen him steering boats ever since, whenever I was here; I have seen him pass by on steamboats.

Q. Do you know anything about his being a competent pilot?

A. I should judge he was; when he was pilot for me, he was recommended to me as a competent man.

By Mr. Marvin:

Q. How long was he in your employment?

A. Six weeks, I think.

Q. How came he to leave?

A. I had another man who was recommended to me when I came first to New York, and he could not come under a month; so Mr. Fisher was recommended as being a good man, and he was hired un- until the other man came on board.

Q. How soon after collision did the other man come on board?

A. Three weeks, I should think; the other man did not come on board until January.

Q. Whereabouts, in regard to the shore, was the Scranton at the time she starboarded her helm and pointed in shore?

A. I should think when she starboarded her helm she was abreast of the ferry slip.

Q. Whereabouts was the Burden at that time?

A. She was just below the pier.

Q. How far?

227 A. Well, I cannot say how far; I did not measure.

Q. Was she opposite to De Forrest's stores?

A. I guess she was.

Q. Did you hear any whistle from the Scranton before or after she had starboarded her helm?

A. I did not hear any from her at all.

Q. At no time?

A. No, sir; at no time.

Q. Do you know whether the Burden had ported her helm before the Scranton put hers to starboard?

A. I do not know whether she had or not; I was not in the pilot-house; I stayed out on deck. I knew we kept a straight course. The Burden did not alter her course.

Q. Did you perceive any change in the direction or course of the Burden at any time?

A. Not until the Scranton hit us, and that a kind of slued us around.

Q. After the collision, and you had passed on, you then passed right out into the stream and crossed over to New York?

A. No, sir.

Q. What did you do?

A. We kept right along the dock until we got above the ferry slip, and then steered across to pier No. 44.

Q. How far did you keep up along the dock?

A. Until the tide struck us, and that canted us off; the tide
228 comes in above the slip. We kept up until the tide struck us, and then went across to pier 44.

Q. If the Burden had starboarded her helm at the same time the Scranton starboarded her helm, would there have been any collision?

A. Yes, sir.

Q. How far above the place where this collision took place was it that you left the line of the shore to pass over to pier 44, New York?

A. I cannot tell how many feet.

Q. Opposite to what place on the Brooklyn side of the river was it that you began to point your course over to New York?

A. It was right up at the ferry slip, the upper side of the ferry slip, when the tide ketched us, (describes on map where the tide caught the Burden.) We kept a straight course until the the tide ketched us and sided us off sideways. We did not change our course.

Q. Where did the tide catch you?

A. Above the Fulton Ferry slip, about the upper side of the pier.

By Mr. Van Santvoord:

Q. Was the Scranton's engine stopped before the collision?

A. It had stopped and started ahead again.

Q. How far off from the McCord was the Scranton at the time her engine was stopped, before starting ahead again?

229 A. It might have been 150 or 175 feet, and it might not

have been as much as that, I cannot tell; it might not have been over 150 feet.

Q. If she had backed instead of starting ahead again could there have been any collision?

A. No, sir; she would not have touched us at all; the tide would have carried her below us, because she was in the ebb tide down.

Q. Was she out in the tide at the time the engine stopped?

A. Yes, sir.

Q. Had you stopped your engine also before the collision?

A. Yes sir; we had stopped our engine.

Q. Which boat stopped her engine first?

A. I did not notice which stopped first; I know we had slowed down and then stopped; which stopped first I cannot say.

Q. You had slowed down?

A. We had slowed our boat before we got there and then stopped.

Q. Did you start ahead again after you had stopped?

A. After the pilot blowed one whistle we started ahead again to get clear of them. We supposed we were on the right side; we blowed the whistle and started ahead again, or bell, which means to go slow.

230 Q. You both stopped your engines about one time?

A. I think so.

Q. What was the relative position of the two boats then?

A. The Scranton was coming down towards us, towards the Brooklyn shore; after she began to slue round, we stopped our engine; she slued round and stopped her engine.

Q. She was heading on to you?

A. Yes, sir.

Q. And where were you heading on to?

A. Straight up the river along the docks.

Q. Suppose you had stopped, or backed after stopping, instead of going ahead again, would there have been a collision?

A. Yes, sir; because the eddy tide was drifting us up. The propeller backs a kind of round, not square like a side-wheeled boat; we would have slued right round, with a heavy load on one side; a side-wheel boat backs straight. We were in the eddy.

Q. Would the eddy tide make any difference, except that you would not have backed as effectually as if the tide had been the other way?

A. How do you mean?

Q. If you had backed you would have gone down the river?

231 A. No, sir; we could not back down the river in an eddy tide; we would have slued right round and gone into the dock; the eddy tide sets on to the dock.

Q. Does the eddy tide run with equal force on each side of the river?

A. In some places there is an eddy tide, and in some places not.

Q. The effect of backing with a boat on your port side would have been to have canted your bow in towards the dock?

A. Yes, sir; it would have canted our head right into the dock and the stern out into the river.

Q. But would she not have made some progress down the river?
A. No, sir, I think not.
Q. None at all?
A. Yes, sir; but not unless we had backed some time.
Q. But you would after a time?
A. We could have got swung out of the eddy into the ebb tide, and gone down the river.
Q. That would have required time?
A. Yes, sir; we could not do that in a minute.

By Mr. Benedict:

Q. When you struck off and the tide caught you, and you went across the river, did you fetch up at Beekman street?
A. No, sir; at pier No. 44 or 45.
Q. You did not stop at pier 37?
232 A. No, sir. We did not stop anywhere until we landed at pier 44.
Q. Where was your destination?
A. Between piers 45 or 46.
Q. Where did they get the pumps?
A. A man jumped off at pier 44 and got pumps.

By Mr. Fithian:

Q. Are you sure that the man jumped off at pier 44 to get the pumps as you are of anything else you have testified to?
A. Yes, sir.
Q. You say you did not stop any place until you got to pier 44?
A. Yes, sir. We did not stop any place until we got to pier 44.
Q. And pumps were got there?
A. We did not wait for them. We stopped to let the man jump off on the pier, and went over to Fulton ferry slip; we did not wait for him.

George E. Warner, called by claimants of the Burden, being duly sworn, was examined:

By Mr. Benedict:

Q. Were you on board the Burden at the time of the collision?
A. Yes, sir.
Q. What were you?
A. A deck hand.
233 Q. Did you see it?
A. Yes, sir.
Q. Where was the Scranton when you first saw her?
A. She was coming down about the middle of the river, I thought.
Q. Whereabouts?
A. Above the ferry.
Q. Where were you standing?
A. On the starboard bow of the Burden, alongside the forecastle.

Q. Did you continue to observe the Scranton, and see what was done?

A. I did, after the whistle was blowed.

Q. You blew a whistle on board your boat?

A. Yes, sir; one whistle.

Q. Where was the Scranton then?

A. Down in the middle of the river, siding in.

Q. Did she come straight down or round to, coming down on a sweep?

A. She was coming down heading towards Brooklyn below us, and then rounded to. As soon as I heard the whistle blow I looked, and she was on a curve.

Q. What was done on your boat?

A. The whistle blowed.

Q. After the whistle blowed what then?

A. I do not recollect.

Q. Did you starboard or port your wheel?

A. I did not notice; all I noticed was that we kept about
234 as straight a course as we had.

Q. Suppose the Scranton, instead of coming in on that course, had kept straight on?

A. She would have cleared and not hurt anything.

Q. Suppose she had ported her wheel instead of starboarding?

A. She would have cleared. If she had stopped the engine and let her drift she would have cleared.

Q. Did you notice whether she had stopped the engine?

A. No, sir.

Q. Did you notice whether the engine was in motion when she came into you?

A. Yes, sir.

Q. Was it or not?

A. Yes, sir; it was.

Q. Could you tell whether she was working forward or back?

A. It looked to me as though she was working forward.

Q. Could you tell whether the vessel was coming to you or not?

A. It was coming to us, I should think, from appearances.

Q. Was it coming slow or fast?

A. It was coming fast.

Q. Very fast?

A. Yes, sir.

Q. What was the motion of your boat?

235 A. We were going ahead.

Q. Can you state from your observation whether or not she went rapidly off sideways, so as to run on the Scranton sideways?

A. No sideways at all—she went straight along.

Q. When did you first think the Scranton was coming into you?

A. When she rounded to, came round on a curve. If she kept that course I knew she could not help but hit us.

Q. Was there anything difficult in her going to your stern?

A. Not that I saw.

Q. Anything in the way of her keeping right straight down to you?

A. No, sir.

Q. Would the force of the tide have carried her down by you if she stopped her engine?

A. Yes, sir.

Q. What could you have done to prevent a collision on board your vessel?

(Objected to.)

Q. How long have you been in this business?

A. I have been boating about six years on sail crafts and in the harbor.

Q. Have you had any considerable experience on tug boats in this harbor?

A. I never have run round the harbor except in that one. I have been on boats running through from Albany and down here.

236 Q. Have you ever been pilot?

A. Yes, sir; on the Burden, the Saxe, and the Starbuck.

Q. Do you consider yourself a competent pilot in this harbor?

A. I would not pilot one of these boats in this harbor. I pilot from Troy to New York.

Q. You are not a good pilot in this harbor?

A. I am not an expert pilot here.

Q. Did you hear any hail?

A. I did not. I do not recollect of any.

Q. Did you hear anything said?

A. No, sir.

Q. Did you hear any vessel?

A. I heard a whistle from the Fulton.

Q. Aany other?

A. No, sir.

By Mr. Van Santvoord:

Q. At the time of the whistle from the Burden what was the position of the two boats?

A. The Scranton was on a curve. I heard the whistle, and when I looked at the Scranton she was curved round.

Q. Was she on the beginning of the curve?

A. Beginning; she was swinging when I looked.

Q. She was swinging when you heard the whistle?

A. Yes, sir; just began to swing.

Q. How long after that did the collision take place?

A. I cannot state the time exactly. It was a short time. It was probably a few moments.

237 By Mr. Benedict:

Q. Where did you go after you got through the collision?

A. We kept on up by the ferry, and I then went over to the New York side.

Q. Where did you go to?

A. I do not know what pier it was. We landed at some pier to let a man off.

Q. What did you do then?

A. Came back to the Brooklyn side, above the ferry, and ran the boat ashore.

Benedict J. Fisher, called by the claimants for the Burden, being duly sworn, examined:

By Mr. Benedict:

Q. Were you pilot of the Burden?

A. Yes, sir.

Q. What was your experience as a pilot?

A. I have been in a few of the boats round the harbor.

Q. Do you think you knew the harbor pretty well?

A. Yes, sir.

Q. How long have you been in the harbor?

A. I have been boating something like ten years, running off and on in the harbor.

Q. How long had you been a pilot at the time of this collision?

A. Well, I should judge about 4 or 5 months.

Q. Were you at the wheel at the time?

238 A. Yes, sir.

Q. When did you first see the Scranton?

A. She was a short distance above the Fulton ferry.

Q. Out towards the middle of the stream?

A. Nearer the Brooklyn shore than the middle.

Q. When did she come down? Did you observe her?

A. I did not see anything of her until I saw her opposite Marston & Powers'; that was the first I saw of her.

Q. How did she come down afterwards?

A. She came down and starboarded her helm, and came in towards us.

Q. Came in on a curve or a straight line?

A. Came on a curve.

Q. Tell the whole story just as it happened, starting with your boat from Wall Street ferry.

A. When I got up about De Forrest's stores, a short distance below Fulton ferry, I saw the Scranton.

Q. Where was she?

A. Near Marston & Powers'. Then there was a whistle blown on the Scranton; I cannot say whether two or one. I did not understand it; I did not hear it distinctly. Then I slowed my boat down and rang one bell. I went on slowly, and when the Scranton rounded her head in pretty well to us I stopped. I thought then it was impossible to come under the stem. I blowed one whistle and rang the hook on bell, which means to work her hard.

239 Then the Scranton appeared to start ahead and came into us.

Q. Are you sure she was coming ahead?

A. I could not swear positively; the engine was working ahead; the boat was coming ahead. I could not see the engine or wheels.

Q. But are you sure the hull was coming ahead?

A. Yes, sir.

Q. Did she jar you at all when she struck?

A. Yes, sir; jarred pretty heavily.

Q. Did you see on the Scranton's deck?

A. Yes, sir.

Q. Do you know whether they felt the jar?

A. I should think so. I saw one young man fall down; knocked down by the jar, I should judge.

Q. Suppose the Scranton had ported her helm at the same time she starboarded, what would have been the effect?

A. She would have gone clear, I should judge.

Q. Suppose when you first saw her she had kept on in that direction and did not starboard her helm?

A. She would have kept down the river and cleared us. When I first saw her she was heading down the river, or very near it.

Q. Outside of you?

A. Yes, sir.

Q. With reference to your own boat, was her direction changed?

240 A. I kept my course until I saw him sheer us, and then stopped; the propeller being on the starboard side of the canal boat, the canal boat shoved her in shore.

Q. Did you port your wheel?

A. I do not remember whether I did or not.

Q. What would be the effect of a heavy boat on the port side when you stopped your engine??

A. It would slue us around to the right a little.

Q. Did any one from your boat hail or say anything to the people on the Scranton?

A. I poked my head out of the window and asked the captain if he wanted to run into us.

Q. What did he say?

A. I got no reply.

Q. How long was that before she came into you?

A. A very few minutes; I cannot exactly state.

Q. Was it after she had come on the curve?

A. That was when she was headed directly on to us, pretty nigh midships.

Q. What could you have done to have avoided this collision that you did not do?

A. I thought I did all I could; I do not know that I could have done any more.

Q. Suppose you had starboarded your helm, what would have been the effect?

A. I was afraid by my starboarding my helm, as he was not quite in the eddy, that my going out in the tide and he in the tide, I would run into him.

241 Q. Can you state whether there was any danger, under these circumstances, in your getting out into the tide where there was another vessel approaching you?

A. No more danger any more than we would not go up the river very fast; we would be in the ebb tide.

Q. What would be the effect it you put out your head to strike the tide?

A. To throw her head down the river. We had to meet the tide there very cautiously to keep it from turning us.

Q. Suppose the tide struck you, would the boat be subject to control for a moment?

A. She will generally fall off with the tide?

Q. Where did you go after the collision?

A. To pier 37 or 38; I am not positive which.

Q. What did you do there?

A. We let the captain of the canal boat, or the man supposed to be the captain, ashore.

Q. Then what did you do?

A. Then started from there and went to the upper side of Fulton ferry, Brooklyn, in shoal water, where the boat would not sink under water.

Q. What course did you keep after the collision?

A. We started to go over, and fell off a little with the tide; then got her head up again and went across to pier 37 or 38.

Q. Where did you strike the tide?

A. Pretty well up; even with the Fulton ferry, I guess.

242 Q. How far do you think you were below the Fulton ferry, lowest pier, when the collision took place?

A I cannot state exactly. We might be somewhere in the neighborhood of 150 or 200 feet; I cannot say positively. It was a short distance below.

Q. What do you say about its being safe or prudent, or good navigation, to attempt to come in between a boat, situated as you were, and Fulton ferry pier, to take up a boat when you were so near?

A. I should consider it a kind of risky.

Q. What would be the danger?

A. The danger of colliding with the other boat coming in.

Q. Are you a licensed pilot?

A. Yes, sir.

By Mr. Marvin:

Q. How long have you been a licensed pilot?

A. Since the 3d of last July.

Q. You were not a licensed pilot at the time of this collision?

A. No, sir; the law did not require us to be at that time.

Q. You say there would be danger of collision in going in to pick up a boat at the south side of the pier. Would there be any danger of a collision if the Burden had starboarded her helm at an early period in this business?

243 A. I should think not, because the Burden would not have been there. She would have been out in the river.

Q. When you first saw the Scranton on the position of her head pointed in towards the Brooklyn ferry, if the Borden had at that time starboarded her helm would there have been a collision?

A. If the Scranton had kept on in the river I think not.

Q. Begin again, and place the position of the two vessels when you first saw them, and then state what took place as you understood it at the time.

A. When I first saw the Scranton, as I say, I was somewhere near De Forrest's store, or in that vicinity; I might be a little below—I think not above—the Scranton was somewhere in the neighborhood of Marston & Powers' coal yard; then the Scranton had blowed one or two whistles, I cannot say which; I did not understand. I heard a whistle. I cannot say positively whether one or two.

Q. Was that before she turned to go in?

A. She was a kind of inching on the Brooklyn shore at the time; she might have been headed in a little, I cannot say positively. I did not answer it. I did not fully understand whether it was one or two; I did not suppose he would blow two, to come across me there; then I slowed my boat and came on cautiously. I then stopped her.

244 Then the Scranton came on abreast of us. I then blowed one whistle and rang the bell to hook on.

Q. Was she then started ahead?

A. Yes, sir; then the Scranton appeared to come ahead; she was coming ahead and we were going ahead. Then I put my head out and spoke to the captain about running into us; with that she came up and hit the canal boat.

Q. Anything else?

A. After she was hit I started out; then the tide caught my head, then I went over to pier 37 or 38.

Q. Did the tide strike you soon?

A. Yes, sir; shortly after.

Q. Whereabouts were you?

A. Pretty near Fulton ferry, lower pier.

Q. When the tide struck you and you begun to turn towards New York?

A. Yes, sir.

Q. Is there anything else you would like to state about it?

A. No, sir.

By Mr. Benedict:

Q. What was the position of the boats at the time you rang the hook on bell?

A. I think the Scranton was lapped on to us a little, had got down partly on us, and was a kind of sheering.

Q. She was headed nearly at right angles to you?

A. Yes, sir; heading in this shape, nearly at right angles, but pointing a little forward.

245 Q. When you say "coming ahead," you mean coming near your course?

A. Yes, sir.
Adjourned to 11 o'clock to-morrow.

Endorsed: U. S. District Court, Irwin McCord, *vs.* St'b't Joseph Johnson and propeller, Wm. F. Burden. Copy stenographer's minutes. May 3, 1865, pp. 151, 245.

246

247 U. S. District Court, before Hon. judge Betts, May, 4th, 1865.

IRWIN MCCORD *et al.*
vs.
ST'B'T JOSEPH JOHNSON.

FREDERICK J. POTTS
vs.
WILLIAM F. BURDEN.

248 Egbert N. Brown, sworn on behalf of the Burden, examined:

By Mr. Benedict:

Q. What is your business?
A. Engineer.
Q. How long have you been an engineer?
A. I have been an engineer since 1863.
Q. You had charge of the engine of the Burden at the time of this collision?
A. Yes, sir.
Q. Where were you?
A. In the engine-room.
Q. Any one with you?
A. Yes, sir.
Q. Who was with you?
A. A fireman.
Q. What is his name?
A. Theodore Jervies. I believe that is his name.
Q. What was the first you heard that there was anything the matter?
A. I heard a bell to slow the engine.
Q. Did you slow her?
A. Yes, sir.
Q. Did you look out to see whereabouts the vessel was at that time?
A. I did not notice. I know we were along shore, but I did not notice whereabouts.
Q. You slowed the engine?
A. Yes, sir.
Q. Did you get any other bell after that?
A. Yes, sir.
Q. What was the next?

249 A. Stop her.

Q. How soon after the bell to slow did you get the bell to stop her?

A. Not a great while; probably two or three minutes, somewhere along there; I could not tell exactly; it was a short space of time, I know.

Q. Did you hear any whistle?

A. Yes, sir.

Q. What whistle did you hear?

A. I heard one whistle from the Burden.

Q. When did you hear the whistle?

A. I don't know whether it was before the bell rang to stop her or after that; it was just about that time.

Q. When you got the bell to stop her, did you stop her?

A. Yes, sir.

Q. Did you look out?

A, Then I looked out.

Q. Which way did you look out?

A. On the port side, on the New York side.

Q. What did you see?

A. I saw the Scranton coming down the river. She was a little out from us, towards New York.

Q. And coming in which direction? Heading towards you?

A. Not exactly; but she was coming a kind of an angle, round. She was not exactly head towards us when I first saw her.

250 Q. How far off was she?

A. She was not very far off.

Q. How many lengths of the boat from you?

A. Well, probably she was 250 or 300 feet from us when I first saw her, or may be further. I could not tell exactly.

Q. Was she going ahead, or was she stopped?

A. She was going ahead.

Q. Did you look at her engine?

A. Yes, sir.

Q. Did you see how it was working?

A. Yes, sir.

Q. How was it working?

A. It was working ahead.

Q. How long did you continue to look at her?

A. I looked at her, and I looked at my engine then, and then I looked at her again. I stood by the door where I worked my engine, and the throttle is right at my door.

Q. You could look out by turning your head?

A. Yes, sir; all I had to do was to look out and see her, and stand by my engine at the same time.

Q. Did you keep watch of her until the collision?

A. Yes, sir.

Q. What did you say about the motion of her engine until the collision?

A. It was working ahead.

Q. How do you tell it was working ahead?

251 A. I can tell by the connecting rod.

Q. If the connecting rod goes down forward?

A. If it goes down she is working ahead; if it is swinging from forward ——

Q. If it goes up she is working back?

A. Yes, sir; she is working back.

Q. Did you get any other bell after the bell to stop?

A. Yes, sir.

Q. What other bell did you get?

A. I got a hook on bell, the jingle bell.

Q. What does that mean?

A. That means to go ahead fast.

Q. Did you do so?

A. Yes, sir.

Q. How long was that before the collision?

A. It was just a short time before the collision.

Q. You worked her ahead until the collision?

A. I hooked her on and worked her ahead, and was looking at the engine at the same time. I had my hand ready in case he wanted to slow her again.

Q. Did you feel the jar of the blow?

A. Yes, sir.

Q. A heavy blow?

A. Yes, sir.

Q. How heavy?

A. It was very heavy. I thought she would run through her bow just before [before] she struck. I made up my mind that she would with the motion she had on her.

252 Q. From what direction did the Scranton come into you?

A. She hit us a kind of a glancing blow. She came a little up. She had rounded to come down, and her stern was a little further down the river than it was up, and she kind of hit the canal boat a glancing blow.

Q. At right angles?

A. It was a little more down than right angles.

Q. What do you say as to the motion of the Scranton through the water?

A. She was coming at a pretty lively rate through the water.

Q. Did you see the man on the deck of the Scranton fall down by the blow?

A. Yes, sir.

Q. Do you know what kind of an engine the engine of the Scranton is?

A. It is a low-pressure engine. I never took particular notice of the engine.

Q. You don't know whether it is a beam engine?

A. It is a beam engine.

Q. How do they start those engines?

A. They start them at the bar.

Q. What is done when the engineer slows the engine?

A. He shoves the throttle up.

Q. How does he do it?

A. He shoves it up on an arm that shuts the valve up so
253 that she would not take so much steam.

Q. When he takes the starting bar to work the engine, how does he know whether he is going to work her forward or back?

A. He can tell by the hook, the way she stands.

Q. If the engine is one side of the centre, the same motion of the bar will send her one way, when, if she is on the other side of the centre, it will send her the other?

A. Some engines will further the bar up; shove up on the bar, and they will come up, and shove down, and they will go down. Some work contrary to the bar, and some with the bar. I don't know whether he worked with the bar or against the bar; I don't know which one this was.

Q. Some engines, if you shove the bar up, the engine works down?

A. Yes, sir.

By Mr. Van Santvoord:

Q. Did you notice whether the Scranton had barges in tow?

A. Yes, sir; she had canal boats.

Q. One each side?

A. Yes, sir.

Q. Did you observe whether the stern of either of them swung out or not?

A. Yes, sir. I saw the stern of one swing out particularly; I did not notice as to the other one, whether it did or did not.

Q. When was that?

254 A. That was the time when she fetched up against the canal boat. I saw the stern of one of the canal boats swing out in the river, and her bow swing in towards the Scranton at the time she hit the canal boat.

Q. Was it not before she hit?

A. No, sir; just about the time she fetched up against the canal boat I saw the stern of the canal boat swung out in [in] the river, or the plug, or whatever you may call them. They are not exactly canal boats or barges.

Captain Arnold, recalled on behalf of the Burden, examined:

By Mr. Benedict:

Q. Do you know where this fireman of yours is?

A. No, sir.

Q. You cannot find him?

A. I don't know where he is. I have seen him since but once or twice; he is all over; he has been in the army since, and I don't know where he is now.

Q. Can you tell which dock is opposite Marston & Powers' stores, on the map?

A. If I had a map that had them on, I think I could. I cannot exactly, except they are numbered. I don't know exactly which number it is. (Witness refers to the map.) Marston & Pow-
255 ers' is the dock between the first and second pier above the Fulton ferry, including the first pier, and De Forrest's stores is just below the first street below the Fulton ferry.

(Testimony closed on behalf of the Burden.)

Captain Walsh, recalled on behalf of the libellant, F. A. Potts, examined:

By Mr. Fithian:

Q. You say that when the Burden, after colliding with you, struck out across the river, she went over to the New York side. I want to get the point, as near as I can, where she first reached the New York side, and attempted to go up the river on the New York side.

A. She kept about straight across, but the ebb tide carried her down, and she fetched up just above the Black Ball pier, the Fulton ferry.

Q. That would be about Peck slip?

A. That would be Peck slip.

Q. Where is that with relation to Beekman street?

A. Just one pier above it.

Q. Then she turned and worked her way up stream to the pier where she stopped?

A. Yes, sir; to pier 33.

Testimony to be taken in court closed.

256 Endorsed: U. S. District Oourt. Irwin McCord *et al. vs.* St'b't Joseph Johnson, and propeller Wm. F. Burden. Copy stenographer's minutes. May 4th, 1865.

257 U. S. District Court.

IRWIN MCCORD *et al.*
vs.
THE STEAMBOAT SCRANTON, JOS. JOHNSON, and the Propeller Wm. F. Burden.

FREDERICK A. POTTS *et al.*
vs.
THE PROPELLER WM. F. BURDEN.

Jonas B. Phillips, a witness, duly sworn and examined in the above causes, deposes as follows:

I live at Hoboken, New Jersey; I am employed as an engineer on the steamboat Joseph Johnson. She has been, since last August, stationed at Point Lookout; I hold second-class papers as chief engineer; I have been a steamboat engineer for 17 years. Second-class papers authorize an engineer to run second-class steamboats. The whole of my time has been spent in running boats about New York waters, from New York to Albany, to Elizabethport, Sandy Hook,

and east as far as Hartford. I have been in Mr. Potts' employ as engineer on the Jos. Johnson for six years. I had been engineer on her for two years before he bought her. I recollect the oc-
258 currence of a collision between the Jos. Johnson and a canal boat in tow of a propeller, which, I understand, was the W. F. Burden. I did not see the name of either the boat or the propeller. It was a collision which occurred about eighteen months ago, in the East river, just below the Fulton ferry; I did not take particular notice of the spot. I was acting as engineer of the Jos. Johnson at the time. At the time of the collision I was sitting in the engine-room in front of the engine. The first I heard was the whistle; two whistles blown; then the bell rung to shut her off, to slow her; then the bell rung to stop. She was stopped at once. I then took the starting bar and shipped it, and two bells rang to back her. I backed her at once. While I was backing her (I had made about two turns and a half back) something struck us. The bell rang to stop backing her after the collision, and I stopped and looked out of the engine-room door to see what was the matter. I saw the propeller and boat going away from us across our bow; I just saw the sterns of the boat. I did not notice their direction, but they were partly standing over towards the New York side. We were headed towards the Brooklyn shore. We were very close into the dock; I could not tell how close, but should say not farther off than a hundred feet. One of
259 my firemen, Henry Smith, was in the engine-room with me all the time. He shut the engine off. When the bell rang to slow her he was cleaning the bright work, and I told him to shut her off. When the bell rang to stop her I told him to unhook her. He did it. I was looking right at him. He did both the things I told him to. When I got the bells to back her, I backed the engine myself. I could not tell whether the propeller's engine was in motion when I looked out; I know they were under headway. When I saw them they might have been 20 feet, or twenty-five, away from us. With the speed that the Johnson was going at that time, I should think that two turns backward would have stopped her. She was turning, and that will stop the speed of any boat. There was alongside of Johnson two light canal barges. I saw the damage that was done to the Johnson. Her bow was knocked off toward the larboard side. I don't know as there was a great deal of it gone, but I saw it hanging there. I saw nothing of the propeller and the canal boat, except what I saw when I went out of the engine-room door.

Cross-examined.

By Mr. Van Santvoord:

The Johnson was a side-wheel steamer, 125 foot keel, 24
260 feet beam, or 25, I don't know which; a forty-two inch cylinder, and eight feet stroke. I think her tonnage was about 250 tons. Running alone they say she can make sixteen knots an hour. I never timed her. I mean sixteen knots through the water. With the two light barges that morning, I suppose we were going seven

knots with the tide, not through the water, before we shut her off. I don't know whether the whistle blew before she was shut off or after. I recollect the whistle blowing twice, but don't recollect whether she had been shut off. I don't recollect the time between the whistle and the bells, but I recollect there was a considerable time between the bell to slow and the bell to stop. The engine of the Johnson was amidships; the engine-room is forward of the wheels and aft of the boilers. The fire-room is next forward of the engine-room. I looked out immediately after the bell to stop backing. I did not come out of the engine-room. Then the boat was going across our bow. Her stern was on our starboard bow then. I looked out on the starboard side and saw it. The boats were clear then. I don't recollect how the tide was. The interval between the bell to stop and the bell to back was very short.

Cross-examined.

By Mr. Benedict:

I was sitting down in front of the engine at the time, facing the engine. I don't recollect where we had been that time. We
261 had been up as far as the Hook in the East river. It was in the neighborhood of nine or ten o'clock in the forenoon. don't recollect whether we had been up above the Hook. I don't recollect which side of the river we took up those boats. We were coming down the river on the Brooklyn side. I had been in the engine-room all the time from the time we started to go down the river till the collision. During that time I was not out of the engine-room. I don't think the engine was making more than eight or ten revolutions a minute before she was slowed. I know which side of the river we came down, because I was looking out of the engine-room door. Above the Fulton street ferry we were very close along the docks. Below the ferry I did not notice. The bell to slow rang just before we got to the Fulton St. ferry.

We might have been going through the water eight knots an hour before we slowed, and might not have been going over six. I think it was at least six knots.

I did not get up from my seat after the bell rang to slow, till after she was unhooked. It might have been twenty seconds between the bell to slow and the bell to stop. The bell to back came almost immediately after the bell to stop. I think I had got two turns and a half back before the blow.

262 If the Johnson was going twelve miles an hour with that tow, it would not take many more turns to stop her than it did that morning. She will stop herself with that tow in three turns at any time. I mean, of course, that she will stop her motion through the water.

Thomas Walsh was captain of the Johnson at the time.

I can't tell what course the Johnson pursued after passing Fulton ferry. When I looked out the Johnson was heading about at right-angles with the Brooklyn shore, with a little cant up the river.

The bell to stop backing rang very soon after the blow. I might have made half a turn or a turn in the interval.

By Mr. Van Santvoord:

In the position she was I don't suppose I could have got more than eight or ten turns backward in a minute. I suppose I was backing about a third of a minute.

Re-direct.

I speak as to these turns from the best of my judgment, not from recollection or from actual experiment. I speak so also as to the length of time before I got the bell to stop backing.

JONAS D. PHILLIPS.

It is stipulated that the above deposition may be read on
263 any trial of this case, subject to all legal exceptions. Copy to be furnished.

BENEDICT, BURR & BENEDICT.
F. J. FITHIAN.
C. VANSANTVOORD.

Endorsed: U. S. District Court. Irwin McCord et al. *vs.* The St. Bt. Scranton, or Joseph Johnson, and the propeller William F. Burden. Frederick A. Potts et al. *vs.* The Propeller William F. Burden. Copy deposition of Jonas B. Phillips on behalf of the Scranton.

264 *Ex. A.*

JUNE 1, 1863.

265 Lamar Ins. Co. to J. McCord, Dr.:

For pumping and care of b't Kate McCord	$35 00
For bedding lost	40 00
For pumps	8 50
For lines, poles, and cabin fixtures	28 00
	$111 50

Buffalo, June 10th, 1864.

Endorsed: Ex. A. Copy.

266 *Ex. B.*

267 NEW YORK, *December 10th*, 1863.

Washington Insurance Company bought of G. B. & J. C. Daniels, commission merchants and dealers in produce, No. 12 South street. Terms cash. All claims for damages or deduction to be made on immediately on receipt of goods.

To 7,000 bush. of No. 1 amber Iowa wheat, *a* 1 43 ..... $10,360 00

Insured Nov. 28, 1863, on open policy, No. 47,648.
Cargo boat Kate McCord.
Received payment, Dec'r 15,'63.

C. B. & J. C. DANIELS.

Endorsed: Ex. B. Copy.

268

Ex. C.

269 OFFICE WASHINGTON INSURANCE COMPANY,
No. 172 BROADWAY, NEW YORK, 10*th December*, 1863.

In consideration of ten thousand three hundred and sixty dollars ($10,360) by them to us paid, the receipt whereof is hereby acknowledged, we have sold, assigned and set over, and hereby do sell, assign and set over to the Washington Insurance Company, all our right, title and interest of, in, and unto (7,000) seven thousand bushels of No. 1 amber Iowa wheat, the cargo of boat Kate McCord, and all our claims for damages thereon.

[L. S.] GEO. B. & J. C. DANIELS.

Witness: F. F. LOCKWOOD.

Endorsed: Ex. C. Copy.

270 *Exhibit D.*

271 NEW YORK, *Dec'r* 18, 1863.

Washington Ins. Co., to John A. Horn, Dr.

One dozen shovels	$14 00
" " baskets	10 88
Dec. 9. Paid for labor in saving dry wheat	22 30
" 10. Labor in taking off wet wheat	82 50
Pumping boat Kate McCord, from Dec'r 10th to 14th	149 50
M. Whitney for use of lighter	75 00
Canvass	12 00
Unloading wet and dry wheat from boats McCord & Timmons	74 62
Lumber	3 08
Towing	19 00
Repairs on pumps	3 50
Cartage	70
Ferriage	1 80
Wharfage, $2 25, 1 25	3 50
	$472 38

Received payment,

JOHN A. HORN.

[2-ct. stamp.]

Endorsed: Ex. D. Copy.

272 *Exhibit E, G. F. B.*

273 Memorandum of loss on cargo of wheat, on board of the canal-boat "Kate McCord," being towed to discharge, on or about Dec'r 9, 1863, by the steam-tug Burden, and run into and sunk by the steamboat "Scranton," in the East river, opposite Fulton street.

Dec'r 10, 1863. Paid for 7,000 bu. wheat, *a* $1 48		$10,360 00
Paid expense in raising boat and cargo p'r J. A. Horn		472 38
" " " drying cargo to J. R. Boyd & Co		740 83
" H. B. Hebert, brokerage for selling		32 28
" fees in U. S. court		7 10
		$11,612 59
Less 1,265 24-60 bu. sound wheat, sold *a* $1 49.	1,885 45	
" 5,191 35-60 " damaged at 85c.	4,412 85	
		6,208 30
Amount of loss		$5,314 29

Endorsed: Ex. E. Copy.

274

275 At a stated term of the District Court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Saturday, the tenth day of February, in the year of our Lord one thousand eight hundred and and sixty-six.

Present: The Honorable Samuel R. Betts, district judge.

IRWIN MCCORD and THE WASHINGTON INSURANCE COMPANY, libellants,
vs.
THE STEAMBOAT JOSEPH JOHNSON, otherwise called the Scranton, her engine, tackle, apparel, and furniture, and the propeller William F. Burden, her engine, tackle, apparel, and furniture.

This case having been heard on the pleadings and proofs, and having been argued and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libellants, Irwin McCord and the Washington Insurance Company, recover against the steamboat Joseph Johnson, her engine, tackle, apparel, and furniture, and the steam propeller William F. Burden, her engine, tacke, apparel, and furniture, the damages and losses to the canal boat "Kate McCord," her tackle, apparel, and

furniture, and to the cargo of wheat on board said canal boat, arising from the collision alleged in the libel.

And it is further ordered that it be referred to a commissioner of this court to ascertain and compute the amount of the said damages and losses to said canal boat "Kate McCord" her tackle, &c., and to the cargo of wheat on board, sustained by the libellants from the causes in their said libel alleged, and report to this court with all convenient speed.

SAM'L R. BETTS.

Endorsed: Vol. 18. No. 194. United States District Court for the southern district of New York. Irwin McCord and the Washington Insurance Company, libell'ts, *vs.* The Steamboat Joseph Johnson, otherwise called the Scranton, her tackle, &c., and the steam propeller Wm. F. Burden, her tackle, &c. C. Van Santvoord, proctor for libell'ts. Int'y decree for libellants and order of reference. Filed the tenth day of February, 1866.

276

277 U. S. District Court.

Ref'ce on decree. Mr. Van Santvoord for libell't, Mr. Benedict for the Wm. F. Burden, Mr. Fithian for the Joseph Johnson.

IRWIN MCCORD and THE WASHINGTON INSURance Company
vs.
THE STEAMBOAT JOSEPH JOHNSON, otherwise called the Scranton, and the steam propeller William F. Burden, her tackle, &c.

FEB'Y 21, 1866.

Libell'ts call George H. Notter, sworn:

Am one of the firm of Van Slyke & Notter, of Buffalo, boat builders and repairers. Have been, since 1843, in Buffalo continuously up to time. I saw the Kate McCord after the collision at the Atlantic dock; her cargo was not all out at that time. I saw her afterwards at the Erie basin, in December, 1863. She was afterwards brought to me in Buffalo be be repaired in the spring of 1864. I did the repairs on her. I examined the condition of the boat when she was here—made a survey of it. She was in about the same condition when she was brought to me as when I saw her in New York; the hole had straightened out a little—not in quite so far—and the boat had settled a little at the ends, which raised her middle a little. She had been caulked a little; otherwise she was in about the
278 same condition.

She was cut in the side near amidships, through the deck and down about four feet below it; into the deck about two feet. The timbers in the wake of it was broke and a good many of them started from the plank for twenty feet each way from the hole. Her side

was shoved in—her port side—from 5 to 7 inches, when she got to Buffalo. We didn't run a line to measure; it was more than that when I saw her in New York. The opposite side was shoved out. She was bent between the cabins, which are about 70 feet apart. The opposite side was not shoved out so much as the other was shoved in, but the strain was in the same parts; the boat is about 96 feet long.

The deck had this same sweep in it that the sides had, and it had to be taken up in the wake of the break to let it come back. The frame, we had to take some of the top timbers out and put in new ones, and some of the futtocks; those were broken. Other frames were started that were not broken; we refastened them. The deck planks were broken as far as the stem of the steamer had come; others were crooked. The rail was cut clear off—broken right in two. We did no repairs on the boat, except what were necessary to repair the damage. We used all the men and help on it
279 that we could to advantage. There are no facilities here in New York for repairing canal boats, except on the sectional dock. In Buffalo we have seven wheel docks for canal boats.

I had personal charge of this job myself. The materials and labor were charged on a blotter as the work progressed. I saw these charges on the book as the work progressed. I was in office sometimes 4 or 5 times a day, sometimes 20 times. I kept track of what went on the book; looked at it almost every time I went in the office.

This is my bill for that work, Exhibit A., G. F. B. It was paid part by the Lamar Insurance Company, part by McCord. That bill was made up from the charges on the blotter. That bill I believe to be correct; amount, $1,351 88-100.

Mr. John Horn was present while the work was being done; McCord was there also a good deal, but not so much as Horn.

In the fall of 1863 I considered it worth in the neighborhood of $1,400 to repair her. Labor was about the same next spring, and repairs would have cost about the same. My estimates were formed on Buffalo rates; my charges on the bill are at Buffalo rates. They are 30 to 40 per cent less than New York rates. I was at work in New York at the time of the collision. The difference consists mostly in lumber and labor. Rate of dockage is less; they charge $10 a day in New York; at Buffalo, no charge. Labor was $3 50-100 for
280 7 hours in New York in Dec'r; in Buffalo, $2 75-100. Lumber on this bill was $181 less than N. Y. prices.

The difference between New York and Buffalo would be over $500 in favor of Buffalo on this bill, Ex. A.

The lumber comes from Canada, or is cut in neighborhood of Buffalo.

A good deal of lumber used in New York for this kind of repairs comes from Buffalo and Lockport.

Cross-ex'd.

By Mr. Benedict:

When I was in New York I went around to see where I could get men and work cheapest, and Van Brunt did the best by me of any one I could find, and I base this estimate on Van Brunt's prices. I don't know the rates at New Brunswick, N. J. There are no canal boat docks in N. Y. Can put them on ship docks, but that costs too much; they lift by the ton.

I couldn't say how many men I had at work on this job—10 or 12 a day, and sometimes more, according to the weather. I can't give the dates of repairs any more than that it was done in May. This bill, Ex. A, is not in my handwriting, it is in my clerk's. I have not compared it with the books, but I know in general what is was.

We were repairing several other boats at the same time. I can say that these items were all for this work under our system of
281 doing repairs.

Re-direct

The account of each job is kept separate. We keep a clerk always in the office for that purpose.

G. H. NOTTER.

Sworn to before me this 21st day of Feb'y, 1866.

GEO. F. BETTS,
U. S. Com'r.

Adj'd to 22d inst., at 12 m.

FEB'Y 22.

Adj d to 26th, at 1 p. m.

FEB'Y 26TH.

Libell'ts put in ev. affidavit of Edgar Haight to Exhibit A, admitted to have the same force as if Edgar Haight were produced before the comm'r and testified to the facts therein stated.

Augustus Maxon, sworn:

I was master of the canal boat Kate M'Cord in Nov., 1863. She was in Buffalo in early part of Nov.; she received her cargo there, at the Main Street elevator; I was on board at the time of the receipt; I tallied it as it came aboard; 700 thousand bushels was received on board; I signed the receipt now shown in the receipt-book of the elevator, marked E. B., (copy to be allowed to be put in,) in these words, viz:

"Received, Buffalo, Nov. 6, 1863, from Main Street elevator, on board Kate McCord, seven thousand bushels of wheat, per order
282 of F. L. Sheldon & Co., 7,000 bus. wheat.

"AUGUSTUS MAXON."

The wheat went into the hull of the boat when it came on board; then I put the hatches on, and barred them down; I then brought the boat through to New York, with the wheat on board; it then passed into the hands of Mr. Weaver; it was consigned to Mr. Eaton, Gage & Eaton. The hatches had been lifted in nice weather, to let air in, coming down the canal, in the daytime; none of the wheat had been taken out. The boat was at Coentie's slip, East river, when it passed into the hands of Mr. Weaver; then I went home to Liverpool, Onondaga co.

Cross-ex'd.

By Mr. Benedict:

We arrived here, I believe, Nov. 26, or about that time; I was here 4 days; boat was lying all that time at Coenties' slip; I was aboard her all that time, day and night; her hatches were kept down all that time—not fastened; I kept a night-watch; I staid on deck half the night, the other man the other half; none of the wheat was removed after I left the elevator. This wheat came aboard in 50 bushel drafts, and I kept a tally of each draft. They filled a hopper till it balanced a scale, and then let into the boat; I looked at the scales—sat where I could watch it—saw it balance the scales, when filled.

AUGUSTUS MAXON.

283 Francis Weaver, sworn:

I know Maxon; knew of his being in charge of the boat in Nov., 1863; I took charge of the boat when he left; I took her to the Atlantic basin; I engaged the Burden to take her to the ship; I was on board till the collision happened; she had on board a cargo of wheat; it was in the hull of the boat; none of it was taken out before the collision; we lighted some out after the collision while the boat was in the slip above Fulton ferry to save the wheat.

Cross-ex'd.

By Mr. Benedict:

I think I took charge same day as Maxon left; I had charge 10 or 12 days before collision; I was on board of her all the time; I tested every day to see if she leaked, by putting a pole down the pump-hole; I didn't try the pump, there was no occasion to; she didn't leak; there were three pump-holes, and one pump; that pump was in good working order at the time of collision.

(Mr. Benedict offers to show that the steamboat Joseph Johnson, in the case mentioned, was guilty of greater negligence in causing the collision than the propeller Burden, for the purpose of showing that she should bear a greater share of the damages. Mr. Van Santvoord objects to the evidence as not within the scope of the reference. Objection sustained. Except.)

F. WEAVER.

284 Frederick L. Lockwood, sworn:

In Nov., 1863, I was adjuster of the Washington Insurance Co. I was ex'd on the trial; I attended to the sale of the cargo, undamaged and damaged; it was taken to Boyd's store, Atlantic dock drying establishment.

Exhibit E, G. F. B., I testified to; the number of bushels there accounted for as sold is 6,456 bushels, 59 pounds; am't paid for by the insurance co. was 7,000 bushels. I account for the difference by shrinking in drying; I have experience in the effect of drying wheat when wet; I have known loss from shrinkage and waste amount to from 10 p.c. to 33⅓ p.c; this is is between 7 p.c and 8 p.c.; it is less than the average; I calculated it would be 1,000 bushels.

Cross-ex'd.

By Mr. Fithian:

I took the check down myself to pay for the 7,000 bushels, at this rate of $1\frac{48}{100}$ per bushel; I attended at selling of 1,265 bushels of sound wheat; helped the broker sell it; $1\frac{49}{100}$, the exact amount we got for it, and the highest market price; it was sold on the Produce Exchange; A. M. Leach was the purchaser; he has a flour-mill on Atlantic dock. The wheat was weighed after dried; sold to Dollard & Galvin; same parties sold it at Produce Exchange; that was the highest price that could be obtained for it.

F. F. LOCKWOOD.

Sworn before me this 26th day of Feb'y, 1866.

GEO. F. BETTS,
U. S. Com'r.

285 Put in evidence testimony from stenogapher's notes of—
Irwin McCord, p. 2–19; Ex. A, & p. 30 & 31.
James Daniels, p. 19 & 28.
John A. Horn, p. 59–60–62; Ex. D to p. 64-65.
Frederick L. Lockwood, p. 65–6; Ex. E.
Libell'ts rest.
Adj'd to March 7th, 12 m.

Endorsed: 18, 194. U. S. District Court. Irwin McCord *et al. vs.* The Steamboat Joseph Johnson, &c., and
" " Wm. F. Burden, &c. Min. on ref'ce.

286

287 *Exhibit A, G. F. B.*

MAY 28, '64.

B't Kate McCord, to Van Slyke & Notter:

To dock	5 00
" 262½ w. spike, 15	39 38
" 166 lbs. spun oakum, 2s.	41 50
" 271 c. spike, 12	26 04
" 125 nails, 10	12 50
" 818 ft. ceiling, 35	28 63
" 893 " oak, 45	88 23
" 2 hooks and staples,	50
" 16 lbs. wrot nails, 20	3 20
" 2,110 ft. pine, 30	63 30
" 1 pr. strap-hinges and screws	50
" 27 lbs. putty, 10	2 70
" 246 lbs. c. spike, 12	29 52
" 2,020 ft. long pine, 50	101 05
" 90 lbs. oakum, 18	16 20
" 13 plat'd nails, 2s.	3 25
" rep w. & p. on r. b. strip	1 25
" 40 lbs. iron for do., 15	6 00
" rep. w. & p. on 3 cross-bars	1 50
" 57 lbs. iron for cross-bars, 15	8 55
" rep. 2 hubs	1 25
" " & p. on 3 w. bars	5 25
" " " shoe	1 00
" 43 lbs. iron for do., 15	6 45
" 220 O. bolts, 15	33 00
" rep. 7 do.	50
" drilling shoe	80
" 12 washers	3 00
" rep's 34 lbs. s. bolt	2 72
To 175 s. bolts	31 50
288 " rep. & p. on 5 side-bars & 3 w.	3 75
" " 3 l. bolts for windlass	75
To 122 iron for side-bar, 15	18 30
" 1 eye-bolt	50
" 1 hasp & staple	38
" glazing	15
" rep. tiller strap	1 75
" 2 l. bolts for do.	50
" 21 iron for cab. stgs., 15	3 15
" rep & w. 3 bus. for cabin	1 00
" 10 knees, 20s.	25 00
" 200 ft. beach, 35	7 00
" pitch	6 00
" 1,062 ft. decking, 5	53 10
" 24 ft. mouldings, 5	1 20

To 261 w'e paint, 30	78 30
" 212 4/10 days' labor, 22s.	584 10
	$1,351 80
June 11, '64. Rec'd of Buell & Davis, agents of Lamar Insurance Company, 5-6 of the above, being	1,126 50
Balance from Henry McCord	225 30

JUNE 11, '64.

Received payment of above bill in full.

VAN SLYKE & NOTTER.
Pr. E. HAIGHT.

[2-c. U. S. int. rev'e stamp, cancelled.]

289 U. S. District Court.

IRWIN MCCORD and THE WASHINGTON INSURance Co.
vs.
THE STEAMBOAT JOSEPH JOHNSON, (otherwise called the Scranton,) her engine, &c., and the propeller Burden, her engine, &c.

NORTHERN DISTRICT OF NEW YORK, *County of Erie, ss:*

Edgar Haight, being sworn, says that he was the book-keeper of Van Slyke & Notter, of Buffalo, in May, 1864; that the within bill, Ex. A, is in the handwriting of this deponent; that the items in said bill, and the charges therein, were copied by this deponent from the original entries in the blotter of Van Slyke & Notter, of charges of repairs of damage to the boat Kate McCord, made by Van Slyke & Notter, in May, 1864, and are correctly copied; that this deponent received payment for Van Slyke & Notter, as receipted on said bill.

EDGAR HAIGHT.

Sworn and subscribed before me February 23d, 1866.
[SEAL.]
GEO. GORHAM,
United States Commissioner for the Northern District of New York.

[U. S. 5-ct. int. rev. stamp, cancelled.]

290

291 U. S. District Court, southern district of N. Y.

IRWIN MCCORD and THE WASHINGTON INSURANCE COMPANY *agst.* THE STEAMBOAT JOSEPH JOHNSON, (sometimes called the Scranton,) her tackle, &c., and the steam propeller William F. Burden, her tackle, &c.

Please to take notice that the report of George F. Betts, esq., commissioner in the above-entitled action, will be filed, and a motion for the confirmation thereof will be made before the judge of this court, at 39 Chambers street, in the city of New York, on the 13th day of March instant, at the opening of the court on that day, or as soon thereafter as counsel can be heard.

Dated at New York, March 9, 1866.

Yours, &c.,

C. VAN SANTVOORD,
Lib'l's Proc'r.

To F. J. Fithiam, esq., proctor for cl't of Johnson.
To Benedict, Burr & Benedict, proctors for cl'm'ts of Burden.

Endorsed: U. S. District Court, 18, 194. Irwin McCord and the Washington Insurance Co. *vs.* The Steamboat Johnson, (sometimes called the Scranton,) her tackle, &c., and the steam
292 propeller Wm. F. Burden, her tackle, &c. Notice of filing and mo. for confirmation of report. C. Van Santvoord, proctor for lib'l'ts.

Due service of a notice, of which the within is a copy, is hereby admitted.

N. Y., March 9, 1866.

BENEDICT, BURR & BENEDICT,
Cl'm'ts Proctors.
F. J. FITHIAN, *For Potts.*

Filed March 13, 1866.

293 *Schedule.*

First. Damages to the boat:

1. Bill for repairs done at Buffalo, paid June 11, 1864	$1,351 84	
Int. on same to March 11, 1866, 1 y'r, 9 mo's,	165 54	
		$1,517 38
2. Beaching and caulking, &c., at Erie basin, and loss of furniture, &c.		111 50
3. Demurrage 25 days at Buffalo, undergoing repairs, @ $15 per day		375 00
Total		2,003 88

Second. Damages to the cargo:			
7,000 bushels of wheat, worth at time of collision	$10,360	00	
Expenses raising boat and cargo	472	38	
" drying cargo	740	83	
Brokerage for selling	32	28	
	11,605	49	
Less proceeds of wheat	6,298	30	
Balance	$5,307	19	
Int. from Jan'y 12, 1864, 2 y'rs, 2 mo's	804	91	
			$6,112 10
Grand total			$8,113 98

294

295 District Court of the United States for the southern district of New York.

Commissioner's report.

IRWIN MCCORD and THE WASHINGTON INSURance Company
vs.
THE STEAMBOAT JOSEPH JOHNSON, (otherwise called the Scranton,) her engines, &c., and the steam propeller William F. Burden, her engines, &c.

In pursuance of a decretal order made in the above-entitled cause, on the tenth day of February, in the year of our Lord one thousand eight hundred and sixty-six, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellants for damages to the canal boat Kate McCord, and to the cargo of wheat on board, sustained from causes in their libel alleged, and to report thereon to this court with all convenient speed, I, George F. Betts, the commissioner to whom the matter was referred, do report, that I have been attended by the proctors for the libellants and for the respective claimants, and have taken and examined the testimony offered in support of the libellants' claim, and in opposition thereto, and do find that there is due to the libellants, for their damages above mentioned, as is particularly set forth in the schedule hereto annexed, and forming part of this report, the sum of eight thousand one hundred and fifteen 98-100 dollars.

Dated the 12th day of March, A. D. 1866.

All of which is respectfully submitted.

(Signed) GEO. F. BETTS,
U. S. Commissioner.
C. VAN SANTVOORD,
Proctor for Libellant.

296 Endorsed: Vol. 18, No. 194. United States District Court for the southern district of New York. Irwin McCord and the Washington Insurance Company *vs.* The Steamboat Joseph Johnson, &c., and the st. propeller Wm. F. Burden. C. Van Santvoord, proctor for libel't. Copy Commissioner's report. Filed the 13th day of March, 1866.

297 U. S. District Court, southern district N. Y.

IRWIN MCCORD and another
aygt.
THE STEAMBOAT JOSEPH JOHNSON (SCRANTON) and another, respondent.

The respondent, Frederick A. Potts, claimant and owner of the said steamboat Joseph Johnson, except to the report of Geo. F. Betts, esq., U. S. commissioner, made herein, and this day filed for the following cause; that is to say, because the said commissioner hath allowed to the libellant, Irwin McCord, three hundred and seventy-five dollars for demurrage when no demurrage should have been allowed.

March 13, 1866.

F. J. FITHIAN,
Proctor for Respondent, Potts.

Endorsed: 18, 194. U. S. District Court, southern district of N. Y. Irwin McCord *& al agt.* The steamboat Joseph Johnson (Scranton) *et al.* Exceptions to comm'r's report. Filed March 13, 1866.

298

299 At a stated term of the District Court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday the thirteenth day of March, in the year of our Lord one thousand eight hundred and sixty-six.

Present: The Honorable Samuel R. Betts, district judge.

IRWIN MCCORD and THE WASHINGTON Insurance Company, libellants,
vs.
THE STEAMBOAT JOSEPH JOHNSON, (also called the Scranton,) her engine, &c., and the st. propeller Wm. F. Burden, her engine, &c. — 18,194.

On reading and filing the report of Geo. F. Betts ates for the States commissioner, to whom the above matter w which there is reported due the libellants for da fully showeth that the libellants by reason of the collision in the named steamboat Jo-

Second. Damages to the cargo:		
7,000 bushels of wheat, worth at time of collision	$10,360 00	
Expenses raising boat and cargo	472 38	
" drying cargo	740 83	
Brokerage for selling	32 28	
	11,605 49	
Less proceeds of wheat	6,298 30	
Balance	$5,307 19	
Int. from Jan'y 12, 1864, 2 y'rs, 2 mo's	804 91	
		$6,112 10
Grand total		$8,113 98

294

295 District Court of the United States for the southern district of New York.

Commissioner's report.

IRWIN MCCORD and THE WASHINGTON INSURance Company
vs.
THE STEAMBOAT JOSEPH JOHNSON, (otherwise called the Scranton,) her engines, &c., and the steam propeller William F. Burden, her engines, &c.

In pursuance of a decretal order made in the above-entitled cause, on the tenth day of February, in the year of our Lord one thousand eight hundred and sixty-six, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellants for damages to the canal boat Kate McCord, and to the cargo of wheat on board, sustained from causes in their libel alleged, and to report thereon to this court with all convenient speed, I, George F. Betts, the commissioner to whom the matter was referred, do report, that I have been attended by the proctors for the libellants and for the respective claimants, and have taken and examined the testimony offered in support of the libellants' claim, and in opposition thereto, and do find that there is due to the libellants, for their damages above mentioned, as is particularly set forth in the schedule hereto annexed, and forming part of this report, the sum of eight thousand one hundred and fifteen 98-100 dollars.

Dated the 12th day of March, A. D. 1866.

All of which is respectfully submitted.

(Signed) GEO. F. BETTS,
U. S. Commissioner.
C. VAN SANTVOORD,
Proctor for Libellant.

296 Endorsed: Vol. 18, No. 194. United States District Court for the southern district of New York. Irwin McCord and the Washington Insurance Company *vs.* The Steamboat Joseph Johnson, &c., and the st. propeller Wm. F. Burden. C. Van Santvoord, proctor for libel't. Copy Commissioner's report. Filed the 13th day of March, 1866.

297 U. S. District Court, southern district N. Y.

IRWIN MCCORD and another
aygt.
THE STEAMBOAT JOSEPH JOHNSON (SCRANTON) and another, respondent.

The respondent, Frederick A. Potts, claimant and owner of the said steamboat Joseph Johnson, except to the report of Geo. F. Betts, esq., U. S. commissioner, made herein, and this day filed for the following cause; that is to say, because the said commissioner hath allowed to the libellant, Irwin McCord, three hundred and seventy-five dollars for demurrage when no demurrage should have been allowed.

March 13, 1866.

F. J. FITHIAN,
Proctor for Respondent, Potts.

Endorsed: 18, 194. U. S. District Court, southern district of N. Y. Irwin McCord *& al agt.* The steamboat Joseph Johnson (Scranton) *et al.* Exceptions to comm'r's report. Filed March 13, 1866.

298

299 At a stated term of the District Court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday the thirteenth day of March, in the year of our Lord one thousand eight hundred and sixty-six.

Present: The Honorable Samuel R. Betts, district judge.

IRWIN MCCORD and THE WASHINGTON Insurance Company, libellants,
vs.
THE STEAMBOAT JOSEPH JOHNSON, (also called the Scranton,) her engine, &c., and the st. propeller Wm. F. Burden, her engine, &c. } 18,194.

On reading and filing the report of Geo. F. Betts, esq., United States commissioner, to whom the above matter was referred, by which there is reported due the libellants for damages sustained by the libellants by reason of the collision in the pleadings mentioned

with interest, the sum of eight thousand one hundred and fifteen 98-100 dollars; and on filing exceptions on the part of the claimants of the Joseph Johnson and Wm. F. Burden, now on motion of C. Van Santvoord, esq., proctor for the libellants, it is ordered, that the said exceptions be overruled and the said report be in all things confirmed, and that the libellants recover in this action against the said steamboats Johnson and Burden, &c. the amount reported due, together with their costs to be taxed, which costs have been taxed at the sum of four hundred and twenty-two 42-100 dollars, and that said steamboats Joseph Johnson, (alias Scranton,) &c. and propeller Wm. F. Burden, &c. be condemned therefore.

And on like motion, it is further ordered, that out of the proceeds of the stipulations for cost and value of the claimants of said steamboats, Johnson and Burden, when paid into the registry of the court, the clerk of this court pay to the libellants or their proctor the amount reported due, together with their taxed costs.

And on like motion of C. Van Santvoord, esq., proctor for the libellants, it is further ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, that the stipulators for costs and value pay into court the amount of their respective stipulations for costs and value and that the clerk of this court distribute the proceeds in satisfaction of this decree.

(Signed) SAM. R. BETTS.

300 Endorsed: Vol. 18, No. 194. United States District Court for the southern district of New York. Irwin McCord and The Washington Insurance Company, libell'ts, *vs.* The St'boat Joseph Johnson, &c., and the propeller Wm. F. Burden. C. Van Santvoord, proctor for libel'ts. Final decree in rem on confirmation of commissioner's report. Filed and entered the thirteenth day of March, 1866.

301 District Court of the United States, southern district of New York.

IRWIN MCCORD and THE WASHINGTON Insurance Company
vs.
THE STEAMBOAT JOSEPH JOHNSON, otherwise called the Scranton, and the steam propeller William F. Burden.

SIR: The respondent, Frederick A. Potts, claimant and owner of the above-named steamboat, Joseph Johnson, (otherwise called the Scranton,) intends to appeal from the final decree of the court in this cause.

Yours, &c.,

F. J. FITHIAN,
Proctor for Respondent, Potts.

To Geo. T. Betts, esq., clerk, &c.; C. Van Santvoord, esq., proctor for libellants.

Endorsed: 18, 194. District Court of U. S., southern district of N. Y. Irwin McCord and The Washington Ins'ce Co. *vs.* The Steamboat Joseph Johnson (otherwise called the Scranton) and the
302 steamer propeller William F. Burden. Notice of intention to appeal. F. J. Fithian, proctor for respondent, Potts. To Geo. T. Betts, esq., clerk, &c. 41 Chambers st. Filed March 14, 1866.

303 United States District Court.

THE PROP'R WM. F. BURDEN, &c., SILAS Betts, and *al.*, claimants and appellants, impleaded, &c., *ads.*
IRWIN MCCORD *et al.*, libellants and appellees.

MARCH 21ST, 1866.

SIR: Please take notice the above-named claimants intend to appeal from the decree entered in this cause.

Yours, &c.,
BENEDICT, BURR & BENEDICT,
Claimants' Proctor.

To C. Van Santvoord, esq., libellants' proctor; Geo. F. Betts, esq., clerk, &c.

Endorsed: 18,194. U. S. District Court. The pro. Wm. F. Burden, &c., Silas Betts and *al.*, claimants and appellants, *ads.* Irwin McCord and *al.*, libellants and appellees. Notice of intention to appeal from the decree entered in this cause. Benedict, Burr & Benedict, claimants' proctor. Filed March 21st, 1866.

304

305 Circuit Court of the United States, southern district of New York.

FREDERICK A. POTTS, claimant & owner of the steamboat Joseph Johnson, otherwise called the Scranton, libeled with the steam propeller William F. Burden, appellant,
vs.
IRWIN MCCORD and THE WASHINGTON INsurance Company, libellants.

To the Honorable the Circuit Court of the United States for the southern district of New York:

The appeal of the above-named appellant respectfully showeth that he is the claimant, and was owner of the above-named steamboat Jo-

seph Johnson, (otherwise called the Scranton.) That on or about the 9th day of January, 1864, the above-named libellants, Irwin McCord and The Washington Insurance Company exhibited their libel in the District Court of the United States for the southern district of New York against the above-named steamboat Joseph Johnson, (otherwise called the Scranton,) together with the said steam propeller William F. Burden, claiming over fifty dollars and praying among other things, for the reason set forth in the said libel, that the said two steamboats might be condemned to pay the demands of said
306 libellants and costs in said libel mentioned.

That process was duly issued out of said court, and said two steamboats were attached by the marshal and taken in custody. That this appellant, Frederick A. Potts, claimant of the steamboat Joseph Johnson, (otherwise called the Scranton,) on or about the 17th day of June, A. D. 1864, filed his separate answer to the said libel in the said District Court praying that the said libel might be dismissed, with costs in that behalf, as by reference to the said libel and the said answer will more fully appear,

That the said cause came on to be heard before the Honorable Samuel R. Betts, judge of the said District Court, on or about the 4th to the 28th days of June, A. D. 1865, upon the depositions and proofs adduced by the respective parties, and said judge having deliberated thereon, on the 10th day of February, in the year 1866, made a decree or sentence in said cause, whereby it was, among other things, sentenced and decreed that the libellants in said cause recover against the said steamboats Joseph Johnson (otherwise called the Scranton) and the said steam propeller William F. Burden the damages which the said libellants had sustained by reason of the collision in the said libel mentioned, with costs, as by reference to said decree will more fully appear, under which said decree a reference
307 was had to the clerk of the said court, who reported that there was due to the said libellants the sum of $8,115 98, which report on the 13th day of March, 1866, was confirmed by the said court by the final decree thereof.

And this appellant, Frederick A. Potts, claimant and owner of said steamboat Joseph Johnson, is advised and insists that the said decrees are erroneous, inasmuch as the said libellants were not entitled to recover or have any damages from or against the said steamboat Joseph Johnson, (otherwise called the Scranton,) by reason of the collision in the said libel set forth.

And this appellant, for these and other reasons, appeals from so much of the said decrees as condemns the said steamboat Joseph Johnson (otherwise called the Scranton) to pay the whole or any portion of such damages or costs, to the next Circuit Court, to be held in the said district, and on the said appeal he intends to have said cause heard anew in the Circuit Court on the pleadings and proofs in the District Court, and other proofs to be introduced in the said Circuit Court; and he prays that the said decree, or so much thereof as condemns the said steamboat Joseph Johnson (otherwise called the Scranton) to pay any part of said damages and costs, may be reversed

with costs, or such other decrees thereupon made as to the said court shall seem just, and that the said libellants be condemned to pay to this appellant his costs and damages in the premises.

308 And he prays that the record and proceedings may be returned to the said Circuit Court.

Dated March 15, 1866.

F. J. FITHIAN,
Proctor for Appellant, Potts.

Endorsed: 18, 194. U. S. Circuit Court. Frederic A. Potts. claimant and owner of the steamboat Joseph Johnson (otherwise called the Scranton) *et al.*, appellant, *vs.* Irwin McCord and the Washington Insurance Company, libellants. Appeal. F. J. Fithian, proctor for appellant, Potts. Due service of a copy of the within appeal is admitted this 22d day of March, 1866. C. Van Santvoord, proctor for libell'ts. Filed March 22d, 1866.

309 Circuit Court of the United States of America for the southern district of New York, in the second circuit.

Bond for costs.

IRWIN McCORD and THE WASHINGTON INSURANCE Company, libellants, appellees,
vs.
THE STEAMBOAT JOSEPH JOHNSON, (alias the Scranton,) her engine, &c., impleaded, &c., Frederick A. Potts, claimant and appellant.

Know all men by these presents, that we, Frederick A. Potts and Joseph T. Moore, are held and firmly bound unto the above-named libellants and appellees in the sum of twelve thousand dollars, to be paid to the said libellants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas the above-named claimant hath prosecuted an appeal to the Circuit Court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above-entitled suit by the judge of the District Court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs if fail to make good , then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[L. S.] F. A. POTTS.
[L. S.] JOS. T. MOORE.

seph Johnson, (otherwise called the Scranton.) That on or about the 9th day of January, 1864, the above-named libellants, Irwin McCord and The Washington Insurance Company exhibited their libel in the District Court of the United States for the southern district of New York against the above-named steamboat Joseph Johnson, (otherwise called the Scranton,) together with the said steam propeller William F. Burden, claiming over fifty dollars and praying among other things, for the reason set forth in the said libel, that the said two steamboats might be condemned to pay the demands of said
306 libellants and costs in said libel mentioned.

That process was duly issued out of said court, and said two steamboats were attached by the marshal and taken in custody. That this appellant, Frederick A. Potts, claimant of the steamboat Joseph Johnson, (otherwise called the Scranton,) on or about the 17th day of June, A. D. 1864, filed his separate answer to the said libel in the said District Court praying that the said libel might be dismissed, with costs in that behalf, as by reference to the said libel and the said answer will more fully appear,

That the said cause came on to be heard before the Honorable Samuel R. Betts, judge of the said District Court, on or about the 4th to the 28th days of June, A. D. 1865, upon the depositions and proofs adduced by the respective parties, and said judge having deliberated thereon, on the 10th day of February, in the year 1866, made a decree or sentence in said cause, whereby it was, among other things, sentenced and decreed that the libellants in said cause recover against the said steamboats Joseph Johnson (otherwise called the Scranton) and the said steam propeller William F. Burden the damages which the said libellants had sustained by reason of the collision in the said libel mentioned, with costs, as by reference to said decree will more fully appear, under which said decree a reference
307 was had to the clerk of the said court, who reported that there was due to the said libellants the sum of $8,115 98, which report on the 13th day of March, 1866, was confirmed by the said court by the final decree thereof.

And this appellant, Frederick A. Potts, claimant and owner of said steamboat Joseph Johnson, is advised and insists that the said decrees are erroneous, inasmuch as the said libellants were not entitled to recover or have any damages from or against the said steamboat Joseph Johnson, (otherwise called the Scranton,) by reason of the collision in the said libel set forth.

And this appellant, for these and other reasons, appeals from so much of the said decrees as condemns the said steamboat Joseph Johnson (otherwise called the Scranton) to pay the whole or any portion of such damages or costs, to the next Circuit Court, to be held in the said district, and on the said appeal he intends to have said cause heard anew in the Circuit Court on the pleadings and proofs in the District Court, and other proofs to be introduced in the said Circuit Court; and he prays that the said decree, or so much thereof as condemns the said steamboat Joseph Johnson (otherwise called the Scranton) to pay any part of said damages and costs, may be reversed

with costs, or such other decrees thereupon made as to the said court shall seem just, and that the said libellants be condemned to pay to this appellant his costs and damages in the premises.

308 And he prays that the record and proceedings may be returned to the said Circuit Court.

Dated March 15, 1866.

F. J. FITHIAN,
Proctor for Appellant, Potts.

Endorsed: 18, 194. U. S. Circuit Court. Frederic A. Potts. claimant and owner of the steamboat Joseph Johnson (otherwise called the Scranton) *et al.*, appellant, *vs.* Irwin McCord and the Washington Insurance Company, libellants. Appeal. F. J. Fithian, proctor for appellant, Potts. Due service of a copy of the within appeal is admitted this 22d day of March, 1866. C. Van Santvoord, proctor for libell'ts. Filed March 22d, 1866.

309 Circuit Court of the United States of America for the southern district of New York, in the second circuit.

Bond for costs.

IRWIN McCORD and THE WASHINGTON INSURANCE Company, libellants, appellees,
vs.
THE STEAMBOAT JOSEPH JOHNSON, (alias the Scranton,) her engine, &c., impleaded, &c., Frederick A. Potts, claimant and appellant.

Know all men by these presents, that we, Frederick A. Potts and Joseph T. Moore, are held and firmly bound unto the above-named libellants and appellees in the sum of twelve thousand dollars, to be paid to the said libellants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas the above-named claimant hath prosecuted an appeal to the Circuit Court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above-entitled suit by the judge of the District Court of the United States for the southern district of New York;

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs if fail to make good , then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[L. S.] F. A. POTTS.
[L. S.] JOS. T. MOORE.

Sealed and delivered and taken and acknowledged this 24th day of March, 1866, before me.

JOHN A. OSBORNE, *U. S. Com'r.*

310 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Frederick A. Potts and Joseph T. Moore, each being duly sworn, deposes and says that he resides in the eastern district of New York, and that he is worth the sum of twelve thousand dollars over and above his just debts and liabilities.

F. A. POTTS.
JOS. T. MOORE.

Sworn to this twenty-fourth day of March, A. D. 1866, before me.
JOHN A. OSBORN, *U. S. Com'r.*

Approved.

C. V. S.

Endorsed: Vol. 18, page 194. U. S. Circuit Court. Irwin McCord and The Washington Insurance Company, libel'ts, appellees, *vs.* The Steamboat Joseph Johnson, (alias Scranton,) her engine, tackle, &c., impleaded, &c., Frederick A. Potts, cl'm't, appellant. Bond for costs and damages in appeal. F. J. Fithian, appellants' proctor. Filed this 24th day of March, 1866.

311 Circuit Court of the United States of America for the southern district of New York, in the second circuit.

Bond for costs.

IRWIN MCCORD and THE WASHINGTON INSURANCE Company, libellants and appellees,
vs.
THE PROPELLER WILLIAM F. BURDEN, HER TACKLE, &c., Silas Betts and Robert Robinson, claimants and appellants, and The Steamboat Joseph Johnson, "sometimes known or called the Scranton," her tackle, apparel, and furniture.

Know all men by these presents, that we, Helmus M. Wells and Francis Bonticon, of the city of New York, are held and firmly bound unto the above-named libellants and appellees in the sum of twelve thousand dollars, to be paid to the said libellants and appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas the above-named claimants have prosecuted an appeal to the Circuit Court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in

the above-entitled suit by the judge of the District Court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named claimants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[L. S.] H. M. WELLS.
[L. S.] F. BONTECON.

Sealed and delivered and taken and acknowledged this 26th day of March, 1866, before me.

[SEAL.] WM. D. JONES,
Notary Public, N. Y. City.

312 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Helmus M. Wells and Francis Bontecon, being duly sworn, each depose and say that he resides in the city of New York, and that he is worth the sum of twenty-four thousand dollars over and above his just debts and liabilities.

H. M. WELLS.
F. BOUNTECON.

Sworn to this twenty-sixth day of M'ch, A. D. 1866, before me.

[SEAL.] WM. D. JONES,
Notary Public, N. Y. County.

I approve of the foregoing bond.
M'ch 26, '66.

C. VAN SANTVOORD,
Proctor for Lib'lt's.

Endorsed: Vol. 18, page 194. U. S. Circuit Court. Irwin McCord and The Washington Ins'ce Co., libell'ts, appellees, *vs.* The Propeller William F. Burden, &c., impleaded, &c., Betts and Robinson, claimants, appellants. Bond for costs and damages on appeal. Benedict, Burr & Benedict, proctors for claimants and appellants, Wm. F. Burden. Filed this 26 day of March, 1866.

313 U. S. Circuit Court.

THE STEAM PROPERLER "WILLIAM F. BURDEN," her tackle, &c., Silas Betts *el al.*, claimants and appellants, and The Steamboat "Joseph Johnson, her tackle, &c., sometimes called the Scranton,

ads.

IRWIN MCCORD and THE WASHINGTON INSURANCE Company, libellants and appellees.

To the honorable the Circuit Court of the United States for the southern district of New York, in the second circuit.

The appeal of the above-named claimants and appellees respectfully shows—

That on or about the eleventh day of January, 1864, the above-named libellants and appellees exhibited their libel in this cause against the above-named vessels, claiming over fifty dollars, and praying, among other things, that said vessels be condemned to pay the libellants' claim with costs, as on reference to said libel will appear.

That thereafter, and on or about the 30th day of January, 1864, the said vessel was bonded and discharged from custody, and thereafter exceptions were duly filed to the said libel, which were
314 argued and disallowed; and on or about the 18th day of June, 1864, the claimants of said propeller "William F. Burden" duly filed their answer to said libel, praying, among other things, that said libel be dismissed with costs, as will more fully appear on reference to said answer.

That thereafter, and on or about the 13th and 28th days of April, and the 2d, 3d, and 4th days of May, 1865, the said cause came on to be tried before the Honorable Samuel R. Betts, judge of the District Court of the United States for the southern district of New York, on the depositions and proofs adduced by the respective parties in the said cause; and the said judge having advised thereon, on or about the 10th day of February, 1866, made a decree in said cause, whereby it was adjudged and decreed that the libellants recover the damages sustained by them by reason of the collision in the libel mentioned, and that it be referred to a commissioner to ascertain and report such damages.

That such proceedings were thereupon had that by the final decree of said District Court, made in this cause on the 13th day of March, 1866, it was ordered, adjudged, and decreed that the libellants recover in this action the sum of eight thousand one hundred and fifteen 98-100 dollars and their costs.

And these appellants are advised and insist that the said
315 decree is erroneous, inasmuch as the libellants were not entitled to recover at all in this action.

And these appellants, for these and other reasons, appeal from the

whole of the said decree to the next Circuit Court to be held in the said district, and on the said appeal they intend to have said cause heard anew on the pleadings and proofs in the District Court, and other proofs to be introduced in the said Circuit Court, and they pray that the record and proceedings may be returned to the said Circuit Court, and that the said decree may be reversed, or such other decree thereon made as to said Circuit Court shall seem just.

BENEDICT, BURR & BENEDICT,
Clm'ts and Appl'ts' Proctors.
E. C. BENEDICT, *Advocate.*

Endorsed: 18, 194. U. S. Circuit Court. Irwin McCord *& al.*, libellants and appellees against the propeller, William F. Burden, &c., impleaded, &c. Appeal. Benedict, Burr & Benedict, clm'ts' proctors, 76 Wall st., N. Y. Filed March 28, 1866.

316

317 UNITED STATES OF AMERICA, *Southern District of New York, City, County, and State of New York, ss:*

Be it remembered, that on this twenty-second day of November, in the year of our Lord one thousand eight hundred and sixty-six, I, R. E. Stilwell, a commissioner duly appointed by the Circuit Court of the United States for the southern district of New York in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act, in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call, and cause to be and personally appear before me, at my office, at the United States Court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Luther Smith, to testify and the truth to say, on the part and behalf of the respondents in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States for the southern district of New York, wherein Irwin McCord and others are libellants and appellees, and the steamboat Joseph Johnson, sometimes called the Scranton, and others, respondents and appellants. And the said Luther Smith, being about the age of years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Luther Smith, and he did thereupon depose, testify, and say as follows, viz:

I reside at 65 Poplar street, Brooklyn. I am superintendent of pilots of the Union Ferry Co., and have been so between 4 and 5 years. I have been a pilot on the waters of New York harbor, and

Sealed and delivered and taken and acknowledged this 24th day of March, 1866, before me.

JOHN A. OSBORNE, *U. S. Com'r.*

310 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Frederick A. Potts and Joseph T. Moore, each being duly sworn, deposes and says that he resides in the eastern district of New York, and that he is worth the sum of twelve thousand dollars over and above his just debts and liabilities.

F. A. POTTS.
JOS. T. MOORE.

Sworn to this twenty-fourth day of March, A. D. 1866, before me.
JOHN A. OSBORN, *U. S. Com'r.*

Approved.

C. V. S.

Endorsed: Vol. 18, page 194. U. S. Circuit Court. Irwin McCord and The Washington Insurance Company, libel'ts. appellees, *vs.* The Steamboat Joseph Johnson, (alias Scranton,) her engine, tackle, &c., impleaded, &c., Frederick A. Potts, cl'm't, appellant. Bond for costs and damages in appeal. F. J. Fithian, appellants' proctor. Filed this 24th day of March, 1866.

311 Circuit Court of the United States of America for the southern district of New York, in the second circuit.

Bond for costs.

IRWIN MCCORD and THE WASHINGTON INSURANCE Company, libellants and appellees,
vs.
THE PROPELLER WILLIAM F. BURDEN, HER TACKLE, &c., Silas Betts and Robert Robinson, claimants and appellants, and The Steamboat Joseph Johnson, "sometimes known or called the Scranton," her tackle, apparel, and furniture.

Know all men by these presents, that we, Helmus M. Wells and Francis Bonticon, of the city of New York, are held and firmly bound unto the above-named libellants and appellees in the sum of twelve thousand dollars, to be paid to the said libellants and appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas the above-named claimants have prosecuted an appeal to the Circuit Court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in

the above-entitled suit by the judge of the District Court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named claimants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[L. S.] H. M. WELLS.
[L. S.] F. BONTECON.

Sealed and delivered and taken and acknowledged this 26th day of March, 1866, before me.

[SEAL.] WM. D. JONES,
Notary Public, N. Y. City.

312 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Helmus M. Wells and Francis Bontecon, being duly sworn, each depose and say that he resides in the city of New York, and that he is worth the sum of twenty-four thousand dollars over and above his just debts and liabilities.

H. M. WELLS.
F. BOUNTECON.

Sworn to this twenty-sixth day of M'ch, A. D. 1866, before me.

[SEAL.] WM. D. JONES,
Notary Public, N. Y. County.

I approve of the foregoing bond.
M'ch 26, '66.

C. VAN SANTVOORD,
Proctor for Lib'l'ts.

Endorsed: Vol. 18, page 194. U. S. Circuit Court. Irwin McCord and The Washington Ins'ce Co., libell'ts, appellees, *vs.* The Propeller William F. Burden, &c., impleaded, &c., Betts and Robinson, claimants, appellants. Bond for costs and damages on appeal. Benedict, Burr & Benedict, proctors for claimants and appellants, Wm. F. Burden. Filed this 26 day of March, 1866.

seph Johnson, (otherwise called the Scranton.) That on or about the 9th day of January, 1864, the above-named libellants, Irwin McCord and The Washington Insurance Company exhibited their libel in the District Court of the United States for the southern district of New York against the above-named steamboat Joseph Johnson, (otherwise called the Scranton,) together with the said steam propeller William F. Burden, claiming over fifty dollars and praying among other things, for the reason set forth in the said libel, that the said two steamboats might be condemned to pay the demands of said
306 libellants and costs in said libel mentioned.

That process was duly issued out of said court, and said two steamboats were attached by the marshal and taken in custody. That this appellant, Frederick A. Potts, claimant of the steamboat Joseph Johnson, (otherwise called the Scranton,) on or about the 17th day of June, A. D. 1864, filed his separate answer to the said libel in the said District Court praying that the said libel might be dismissed, with costs in that behalf, as by reference to the said libel and the said answer will more fully appear,

That the said cause came on to be heard before the Honorable Samuel R. Betts, judge of the said District Court, on or about the 4th to the 28th days of June, A. D. 1865, upon the depositions and proofs adduced by the respective parties, and said judge having deliberated thereon, on the 10th day of February, in the year 1866, made a decree or sentence in said cause, whereby it was, among other things, sentenced and decreed that the libellants in said cause recover against the said steamboats Joseph Johnson (otherwise called the Scranton) and the said steam propeller William F. Burden the damages which the said libellants had sustained by reason of the collision in the said libel mentioned, with costs, as by reference to said decree will more fully appear, under which said decree a reference
307 was had to the clerk of the said court, who reported that there was due to the said libellants the sum of $8,115 98, which report on the 13th day of March, 1866, was confirmed by the said court by the final decree thereof.

And this appellant, Frederick A. Potts, claimant and owner of said steamboat Joseph Johnson, is advised and insists that the said decrees are erroneous, inasmuch as the said libellants were not entitled to recover or have any damages from or against the said steamboat Joseph Johnson, (otherwise called the Scranton,) by reason of the collision in the said libel set forth.

And this appellant, for these and other reasons, appeals from so much of the said decrees as condemns the said steamboat Joseph Johnson (otherwise called the Scranton) to pay the whole or any portion of such damages or costs, to the next Circuit Court, to be held in the said district, and on the said appeal he intends to have said cause heard anew in the Circuit Court on the pleadings and proofs in the District Court, and other proofs to be introduced in the said Circuit Court; and he prays that the said decree, or so much thereof as condemns the said steamboat Joseph Johnson (otherwise called the Scranton) to pay any part of said damages and costs, may be reversed

with costs, or such other decrees thereupon made as to the said court shall seem just, and that the said libellants be condemned to pay to this appellant his costs and damages in the premises.

308 And he prays that the record and proceedings may be returned to the said Circuit Court.

Dated March 15, 1866.

F. J. FITHIAN,
Proctor for Appellant, Potts.

Endorsed: 18, 194. U. S. Circuit Court. Frederic A. Potts. claimant and owner of the steamboat Joseph Johnson (otherwise called the Scranton) *et al.*, appellant, *vs.* Irwin McCord and the Washington Insurance Company, libellants. Appeal. F. J. Fithian, proctor for appellant, Potts. Due service of a copy of the within appeal is admitted this 22d day of March, 1866. C. Van Santvoord, proctor for libell'ts. Filed March 22d, 1866.

309 Circuit Court of the United States of America for the southern district of New York, in the second circuit.

Bond for costs.

IRWIN MCCORD and THE WASHINGTON INSURANCE Company, libellants, appellees,
vs.
THE STEAMBOAT JOSEPH JOHNSON, (alias the Scranton,) her engine, &c., impleaded, &c., Frederick A. Potts, claimant and appellant.

Know all men by these presents, that we, Frederick A. Potts and Joseph T. Moore, are held and firmly bound unto the above-named libellants and appellees in the sum of twelve thousand dollars, to be paid to the said libellants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas the above-named claimant hath prosecuted an appeal to the Circuit Court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above-entitled suit by the judge of the District Court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs if fail to make good , then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[L. S.] F. A. POTTS.
[L. S.] JOS. T. MOORE.

Sealed and delivered and taken and acknowledged this 24th day of March, 1866, before me.

JOHN A. OSBORNE, *U. S. Com'r.*

310 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Frederick A. Potts and Joseph T. Moore, each being duly sworn, deposes and says that he resides in the eastern district of New York, and that he is worth the sum of twelve thousand dollars over and above his just debts and liabilities.

F. A. POTTS.
JOS. T. MOORE.

Sworn to this twenty-fourth day of March, A. D. 1866, before me.
JOHN A. OSBORN, *U. S. Com'r.*

Approved.

C. V. S.

Endorsed: Vol. 18, page 194. U. S. Circuit Court. Irwin McCord and The Washington Insurance Company, libel'ts, appellees, *vs.* The Steamboat Joseph Johnson, (alias Scranton,) her engine, tackle, &c., impleaded, &c., Frederick A. Potts, cl'm't, appellant. Bond for costs and damages in appeal. F. J. Fithian, appellants' proctor. Filed this 24th day of March, 1866.

311 Circuit Court of the United States of America for the southern district of New York, in the second circuit.

Bond for costs.

IRWIN MCCORD and THE WASHINGTON INSURANCE Company, libellants and appellees,
vs.
THE PROPELLER WILLIAM F. BURDEN, HER TACKLE, &c., Silas Betts and Robert Robinson, claimants and appellants, and The Steamboat Joseph Johnson, "sometimes known or called the Scranton," her tackle, apparel, and furniture.

Know all men by these presents, that we, Helmus M. Wells and Francis Bonticon, of the city of New York, are held and firmly bound unto the above-named libellants and appellees in the sum of twelve thousand dollars, to be paid to the said libellants and appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas the above-named claimants have prosecuted an appeal to the Circuit Court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in

the above-entitled suit by the judge of the District Court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named claimants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[L. S.] H. M. WELLS.
[L. S.] F. BONTECON.

Sealed and delivered and taken and acknowledged this 26th day of March, 1866, before me.

[SEAL.] WM. D. JONES,
Notary Public, N. Y. City.

312 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Helmus M. Wells and Francis Bontecon, being duly sworn, each depose and say that he resides in the city of New York, and that he is worth the sum of twenty-four thousand dollars over and above his just debts and liabilities.

H. M. WELLS.
F. BOUNTECON.

Sworn to this twenty-sixth day of M'ch, A. D. 1866, before me.

[SEAL.] WM. D. JONES,
Notary Public, N. Y. County.

I approve of the foregoing bond.
M'ch 26, '66.

C. VAN SANTVOORD,
Proctor for Lib'll'ts.

Endorsed: Vol. 18, page 194. U. S. Circuit Court. Irwin McCord and The Washington Ins'ce Co., libell'ts, appellees, *vs*. The Propeller William F. Burden, &c., impleaded, &c., Betts and Robinson, claimants, appellants. Bond for costs and damages on appeal. Benedict, Burr & Benedict, proctors for claimants and appellants, Wm. F. Burden. Filed this 26 day of March, 1866.

313 U. S. Circuit Court.

THE STEAM PROPERLER "WILLIAM F. BURDEN," her tackle, &c., Silas Betts *el al.*, claimants and appellants, and The Steamboat "Joseph Johnson, her tackle, &c., sometimes called the Scranton,

ads.

IRWIN MCCORD and THE WASHINGTON INSURANCE Company, libellants and appellees.

To the honorable the Circuit Court of the United States for the southern district of New York, in the second circuit.

The appeal of the above-named claimants and appellees respectfully shows—

That on or about the eleventh day of January, 1864, the above-named libellants and appellees exhibited their libel in this cause against the above-named vessels, claiming over fifty dollars, and praying, among other things, that said vessels be condemned to pay the libellants' claim with costs, as on reference to said libel will appear.

That thereafter, and on or about the 30th day of January, 1864, the said vessel was bonded and discharged from custody, and thereafter exceptions were duly filed to the said libel, which were
314 argued and disallowed; and on or about the 18th day of June, 1864, the claimants of said propeller "William F. Burden" duly filed their answer to said libel, praying, among other things, that said libel be dismissed with costs, as will more fully appear on reference to said answer.

That thereafter, and on or about the 13th and 28th days of April, and the 2d, 3d, and 4th days of May, 1865, the said cause came on to be tried before the Honorable Samuel R. Betts, judge of the District Court of the United States for the southern district of New York, on the depositions and proofs adduced by the respective parties in the said cause; and the said judge having advised thereon, on or about the 10th day of February, 1866, made a decree in said cause, whereby it was adjudged and decreed that the libellants recover the damages sustained by them by reason of the collision in the libel mentioned, and that it be referred to a commissioner to ascertain and report such damages.

That such proceedings were thereupon had that by the final decree of said District Court, made in this cause on the 13th day of March, 1866, it was ordered, adjudged, and decreed that the libellants recover in this action the sum of eight thousand one hundred and fifteen 98-100 dollars and their costs.

And these appellants are advised and insist that the said
315 decree is erroneous, inasmuch as the libellants were not entitled to recover at all in this action.

And these appellants, for these and other reasons, appeal from the

whole of the said decree to the next Circuit Court to be held in the said district, and on the said appeal they intend to have said cause heard anew on the pleadings and proofs in the District Court, and other proofs to be introduced in the said Circuit Court, and they pray that the record and proceedings may be returned to the said Circuit Court, and that the said decree may be reversed, or such other decree thereon made as to said Circuit Court shall seem just.

BENEDICT, BURR & BENEDICT,
Clm'ts and Appl'ts' Proctors.
E. C. BENEDICT, *Advocate.*

Endorsed: 18, 194. U. S. Circuit Court. Irwin McCord *& al.*, libellants and appellees against the propeller, William F. Burdon, &c., impleaded, &c. Appeal. Benedict, Burr & Benedict, clm'ts' proctors, 76 Wall st., N. Y. Filed March 28, 1866.

316

317 UNITED STATES OF AMERICA, *Southern District of New York, City, County, and State of New York, ss:*

Be it remembered, that on this twenty-second day of November, in the year of our Lord one thousand eight hundred and sixty-six, I, R. E. Stilwell, a commissioner duly appointed by the Circuit Court of the United States for the southern district of New York in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act, in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call, and cause to be and personally appear before me, at my office, at the United States Court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Luther Smith, to testify and the truth to say, on the part and behalf of the respondents in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States for the southern district of New York, wherein Irwin McCord and others are libellants and appellees, and the steamboat Joseph Johnson, sometimes called the Scranton, and others, respondents and appellants. And the said Luther Smith, being about the age of years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Luther Smith, and he did thereupon depose, testify, and say as follows, viz: I reside at 65 Poplar street, Brooklyn. I am superintendent of pilots of the Union Ferry Co., and have been so between 4 and 5 years. I have been a pilot on the waters of New York harbor, and

was so for eight or nine years. I am familiar with the navigating of steam vessels in and about the harbor of New York, and have about fourteen years experience at it. I am acquainted with the navigation of the East river. The Union Ferry Companies are the five ferries on the East river from the Hamilton Ferry to Catharine Street Ferry; thirty pilots in all. I know the location of Fulton Ferry slip is on the Brooklyn side. I am acquainted with the loca-
318 tion of Marston & Powers' dock, a short distance above the Fulton Ferry slip. I am acquainted with the dock called De Forrest's stores, below Fulton Ferry slip, the lower one.

Q. Suppose you were with a steamboat in the river off Marston & Powers' dock, in a course heading towards the lower pier of Fulton Ferry slip, and intending to land there, and you saw a steam vessel coming up the Brooklyn shore opposite the De Forrest stores, what signal would you give to indicate your intention to go inside of land there?

A. Two blasts of the steam whistle.

Q. What would it be the duty of the other vessel then to do, if you gave that signal?

A. To answer with the same like signal, and put his wheel astarboard, and steer off shore if he could not clear us without.

Q. Suppose he did not understand your signal, what would he do in that case?

A. He should blow three blasts of his steam whistle, and stop his boat.

Q. Suppose he did understand your signal, but thought that he could not safely comply with your signal, what should he do?

A. Blow three blasts of his whistle, and stop and back his boat.

319 Q. Is there any risk or objection to your giving the signal and attempting to go in from the position I have before indicated, provided the other boat should understand and obey the same?

A. I think not, at that distance apart.

Q. Do you see any difficulty whatever in the boat passing up, putting her helm to starboard, and going outside?

A. None whatever.

Q. Are you acquainted with such a thing as an eddy tide eddying up on the Brooklyn shore below the Fulton Ferry slip, when there is a strong ebb tide out in the centre of the river running down?

A. I am; always except about [about] a half an hour at the turn of the tide, an eddy forms along the Brooklyn shore up to the Fulton Ferry slip.

Q. Suppose a propeller tug with a loaded canal boat on her port side passing slowly up in this eddy tide, is there any difficulty in her stopping and backing, and about what difference in your judgment would it require to stop her headway?

A. That it depends upon the power of the boat and the weight of her tow, ordinarily about twice the length of her.

(Mr. Benedict, counsel for the Burden, and objects to the taking of

the deposition, for the reason that the cause is now on hearing,
320 as it has been set down for this day, and the notice was not sufficient, as it was served only at 5 o'clock last night.)

Cross-examined.

By Mr. Van Santvoord, on the part of the libellants:

X. These rules as to signals are derived from the rules of the supervising inspector under the act of Congress.

X. Suppose a steamboat intending to land at the lower pier of the Fulton Ferry slip when off Marston & Powers' dock coming do a little below that dock, should give two blasts of a steam w intended for a steamer coming up in the eddy tide close in sh or a little above De Forrest's dock, would it be correct for the st coming down, according to your views, to put her helm astarbo the risk of the condition of the vessel coming up without waiti a response from the steamer coming up, or without waiting whether the steamer coming up understood the signal?

A. If there is no signal given from either party, it is their d... pass to the right. If they are heading anywhere near heads
321 and head. But the first vessel that gives the signal has the right of way in any reasonable distance; I think this answer covers the question.

Subscribed and sworn to before me this 22d November, 1866.
R. E. STILWELL, *U. S. Com'r.*

322

323 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, R. E. Stilwell, a commissioner duly appointed by the Circuit Court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the Judicial Courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is the witness is material and necessary in the cause in the caption of the said deposition named, and that the same is taken under the rules of the Supreme Court of the U. States.

I further certify, that notification of the time and place of taking the said depoition signed by me was made out and served on the to be present at the taking of the said deposition and to put interrogatories, if he or they might think fit.

I further certify, that on the 22d day of November, in the year of our Lord one thousand eight hundred and sixty-six, I was attended by Mr. Fithian and Mr. Vansantvoord, counsel for the respective parties, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the same in the court for which the same was taken; and I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this twenty-second day of November, in the year of our Lord one thousand eight hundred sixty-six, and of the independence of the United States the ninty-first.

R. E. STILWELL,

United States Commissioner, duly appointed by the Circuit Court of the United States for the southern district of New York, in the second circuit.

324

325 At a stated term of the Circuit Court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Friday the 23d day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

IRWIN MCCORD and THE WASHINGTON INSURANCE Co., lib'ts and appellees,
vs.
THE ST'B'T J. JOHNSON, OTHERWISE CALLED SCRANTON, *et als.*, cl'm'ts and appellants.

The appeal in this case from the District Court coming on to be heard, Mr. Van Santvoord reads the deposition of Thomas Walsh and George Arnold, and argues on the part of lib'l'ts and appellees.

Mr. Benedict reads testimony from the Apostles, and argues on the part of claimants and appellants.

326

327 At a stated term of the Circuit Court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on

Saturday, the 24th day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

IRWIN MCCORD *& als.*, lib'ts and appellees,
vs.
The ST'B'T J. JOHNSON *& als.*, claim'ts and appellants.

The appeal in this case being still on hearing—
Mr. Benedict concludes his argument on the part of the appellants.
Mr. Fithian argues on the same side.
Mr. Vansantvoord is heard in reply.
Cur. adv. vult.

328

329 At a stated term of the Circuit Court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on the sixth day of June, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

IRWIN MCCORD and THE WASHINGTON INSURANCE Company
ag'st
The STEAMBOAT JOSEPH JOHNSON, otherwise called the Scranton, her tackle, &c., the propeller William Burden, her tackle, &c.

This cause having been heard on the pleadings and proofs on the respective appeals of Frederick A. Potts, the claimant and owner of the steamboat Joseph Johnson, otherwise called the Scranton, and of Silas Betts, Robert Robinson, and George Arnold, the claimants and owners of the propeller William F. Burden, from the final decree of the District Court of the United States for the southern district of New York, and having been argued by the advccates of the respective parties, and deliberation having been had in the premises, it is now ordered, adjudged, and decreed by this court, that said decree of the District Court for the southern district of New York be affirmed as against the steamboat Joseph Johnson, her engine, tackle, apparel, and furniture, as solely in fault for the damages arising from the collision in the pleadings mentioned, and that
330 the same be reversed as against the propeller W. F. Burden, her engine, tackle, apparel, and furniture, and the libel dismissed as against her with costs in this court, and the District Court to be taxed.

And it is further ordered, adjudged, and decreed, that the libellants, Irwin McCord and the Washington Insurance Company, re-

was so for eight or nine years. I am familiar with the navigating of steam vessels in and about the harbor of New York, and have about fourteen years experience at it. I am acquainted with the navigation of the East river. The Union Ferry Companies are the five ferries on the East river from the Hamilton Ferry to Catharine Street Ferry; thirty pilots in all. I know the location of Fulton Ferry slip is on the Brooklyn side. I am acquainted with the loca-
318 tion of Marston & Powers' dock, a short distance above the Fulton Ferry slip. I am acquainted with the dock called De Forrest's stores, below Fulton Ferry slip, the lower one.

Q. Suppose you were with a steamboat in the river off Marston & Powers' dock, in a course heading towards the lower pier of Fulton Ferry slip, and intending to land there, and you saw a steam vessel coming up the Brooklyn shore opposite the De Forrest stores, what signal would you give to indicate your intention to go inside of land there?

A. Two blasts of the steam whistle.

Q. What would it be the duty of the other vessel then to do, if you gave that signal?

A. To answer with the same like signal, and put his wheel astarboard, and steer off shore if he could not clear us without.

Q. Suppose he did not understand your signal, what would he do in that case?

A. He should blow three blasts of his steam whistle, and stop his boat.

Q. Suppose he did understand your signal, but thought that he could not safely comply with your signal, what should he do?

A. Blow three blasts of his whistle, and stop and back his boat.

319 Q. Is there any risk or objection to your giving the signal and attempting to go in from the position I have before indicated, provided the other boat should understand and obey the same?

A. I think not, at that distance apart.

Q. Do you see any difficulty whatever in the boat passing up, putting her helm to starboard, and going outside?

A. None whatever.

Q. Are you acquainted with such a thing as an eddy tide eddying up on the Brooklyn shore below the Fulton Ferry slip, when there is a strong ebb tide out in the centre of the river running down?

A. I am; always except about [about] a half an hour at the turn of the tide, an eddy forms along the Brooklyn shore up to the Fulton Ferry slip.

Q. Suppose a propeller tug with a loaded canal boat on her port side passing slowly up in this eddy tide, is there any difficulty in her stopping and backing, and about what difference in your judgment would it require to stop her headway?

A. That it depends upon the power of the boat and the weight of her tow, ordinarily about twice the length of her.

(Mr. Benedict, counsel for the Burden, and objects to the taking of

the deposition, for the reason that the cause is now on hearing,
320 as it has been set down for this day, and the notice was not sufficient, as it was served only at 5 o'clock last night.)

Cross-examined.

By Mr. Van Santvoord, on the part of the libellants:

X. These rules as to signals are derived from the rules of the supervising inspector under the act of Congress.

X. Suppose a steamboat intending to land at the lower pier of the Fulton Ferry slip when off Marston & Powers' dock coming down, or a little below that dock, should give two blasts of a steam whistle intended for a steamer coming up in the eddy tide close in shore at or a little above De Forrest's dock, would it be correct for the steamer coming down, according to your views, to put her helm astarboard at the risk of the condition of the vessel coming up without waiting for a response from the steamer coming up, or without waiting to see whether the steamer coming up understood the signal?

A. If there is no signal given from either party, it is their duty to pass to the right. If they are heading anywhere near heads
321 and head. But the first vessel that gives the signal has the right of way in any reasonable distance; I think this answer covers the question.

Subscribed and sworn to before me this 22d November, 1866.
R. E. STILWELL, *U. S. Com'r.*

322

323 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, R. E. Stilwell, a commissioner duly appointed by the Circuit Court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the Judicial Courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is the witness is material and necessary in the cause in the caption of the said deposition named, and that the same is taken under the rules of the Supreme Court of the U. States.

I further certify, that notification of the time and place of taking the said depoition signed by me was made out and served on the to be present at the taking of the said deposition and to put interrogatories, if he or they might think fit.

I further certify, that on the 22d day of November, in the year of our Lord one thousand eight hundred and sixty-six, I was attended by Mr. Fithian and Mr. Vansantvoord, counsel for the respective parties, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the same in the court for which the same was taken; and I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this twenty-second day of November, in the year of our Lord one thousand eight hundred sixty-six, and of the independence of the United States the ninty-first.

R. E. STILWELL,
United States Commissioner, duly appointed by the Circuit Court of the United States for the southern district of New York, in the second circuit.

324

325 At a stated term of the Circuit Court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Friday the 23d day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

IRWIN MCCORD and THE WASHINGTON INSURANCE Co., lib'ts and appellees,
vs.
THE ST'B'T J. JOHNSON, OTHERWISE CALLED SCRANTON, *et als.*, cl'm'ts and appellants.

The appeal in this case from the District Court coming on to be heard, Mr. Van Santvoord reads the deposition of Thomas Walsh and George Arnold, and argues on the part of lib'l'ts and appellees.

Mr. Benedict reads testimony from the Apostles, and argues on the part of claimants and appellants.

326

327 At a stated term of the Circuit Court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on

Saturday, the 24th day of November, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

IRWIN MCCORD *& als.*, lib'ts and appellees,
vs.
The ST'B'T J. JOHNSON *& als.*, claim'ts and appellants.

The appeal in this case being still on hearing—
Mr. Benedict concludes his argument on the part of the appellants.
Mr. Fithian argues on the same side.
Mr. Vansantvoord is heard in reply.
Cur. adv. vult.

328

329 At a stated term of the Circuit Court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on the sixth day of June, in the year of our Lord one thousand eight hundred and sixty-seven.

Present: The Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

IRWIN MCCORD and THE WASHINGTON INSURANCE Company
ag'st
The STEAMBOAT JOSEPH JOHNSON, otherwise called the Scranton, her tackle, &c., the propeller William Burden, her tackle, &c.

This cause having been heard on the pleadings and proofs on the respective appeals of Frederick A. Potts, the claimant and owner of the steamboat Joseph Johnson, otherwise called the Scranton, and of Silas Betts, Robert Robinson, and George Arnold, the claimants and owners of the propeller William F. Burden, from the final decree of the District Court of the United States for the southern district of New York, and having been argued by the advccates of the respective parties, and deliberation having been had in the premises, it is now ordered, adjudged, and decreed by this court, that said decree of the District Court for the southern district of New York be affirmed as against the steamboat Joseph Johnson, her engine, tackle, apparel, and furniture, as solely in fault for the damages arising from the collision in the pleadings mentioned, and that
330 the same be reversed as against the propeller W. F. Burden, her engine, tackle, apparel, and furniture, and the libel dismissed as against her with costs in this court, and the District Court to be taxed.

And it is further ordered, adjudged, and decreed, that the libellants, Irwin McCord and the Washington Insurance Company, re-

cover against the said steamboat Joseph Johnson, otherwise called the Scranton, her engine, tackle, apparel, and furniture, or her said claimant, eight thousand one hundred and fifteen 98-100 dollars, the amount of their damages by reason of said collision, as adjudged by the said final decree of said District Court, together with four hundred and twenty-two 42-100 dollars, the costs of said libellants in said District Court, as taxed in said court, in all amounting to the sum of eight thousand five hnndred and thirty-eight 40-100 dollars.

And it is further ordered, adjudged, and decreed, that said libellants recover of said claimants, as damages by reason of his said appeal, interest on the amount of their said damages, and costs from the date of said decree, in said District Court as aforesaid, (20th March, 1866,) besides the cost on said appeal to this court to be taxed, amounting to $916 86-100 dollars, and in the aggregate to the sum of $9,455 26.

And it is further ordered and decreed, that Silas Betts, Robert Robinson, and George Arnold, claimants of the propeller W. F. Burden, recover of Irwin McCord and the Washington Insurance Co., libellant herein, the sum of two hundred and forty dollars forty-seven cents, being their costs in the District Court, and the
331 sum of one hundred and thirty-four 15-100 for their costs in this court, amounting in all to the sum of three hundred and seventy-four 62-100, and that judgment be entered against the said libellants in their favor therefor.

S. NELSON.

Endorsed: U. S. Circuit Court, second circuit. Irwin McCord and The Washington Insurance Company *ag'st* The steamboat Joseph Johnson, otherwise called the Scranton, her tackle, &c., and The propeller Burden, her tackel, &c. Decree. C. Van Santvoord, proctor for l'b'ts.

Filed June 8, '67.

332

333 Supreme Court of the United States.

THE STEAMBOAT JOSEPH JOHNSON, otherwise called the Scranton, her tackle, apparel, &c., Frederick A. Potts, claimant and appellant,

vs.

IRWIN MCCORD and THE WASHINGTON Insurance Company, respondents.

The appeal of Frederick A. Potts, the above-named claimant and appellant, respectfully showeth, that on the eleventh day of January, 1864, the above-named Irwin McCord and the Washington Insurance Company filed their libel in the District Court of the United States for the southern district of New York, against the steamboat Joseph Johnson, (otherwise called the Scranton,) her engine, tackle, &c., and against the steam propeller William F. Burden, her engine, tackle, &c., in a cause civil and maritime, for the recovery of damages al-

leged to have been sustained by them to the canal-boat Kate McCord and her cargo, by collision with the said steamboat Joseph Johnson and the said propeller William F. Burden, on the East river, in the State of New York, caused by the negligence and carelessness of the said steamboat Joseph Johnson and said propeller Wil-
334 liam F. Burden, and that said steamboat Joseph Johnson and said steam propeller William F. Burden were arrested upon process issued upon said libel, and said steamboat Joseph Johnson was discharged on your petitioner's filing his claim and entering into stipulations, and your petitioner thereupon filed his answer to said libel, and such proceedings were had in the said cause that on the thirteenth day of March, 1866, a final decree was made and pronounced therein by the said District Court, wherein it was in substance adjudged that the said libellants recover against the said steamboat Joseph Johnson, her tackle, &c., the sum of eight thousand one hundred and fifteen dollars and ninety-eight cents, together with costs.

And that after such final decree your petitioners duly appealed therefrom to the Circuit Court of the United States for the southern district of New York, and the said cause was removed thereby into the said Circuit Court, and there tried anew; and such proceedings were had in the said Circuit Court that afterwards, on the sixth day of June, 1867, the said Circuit Court made a final decree in the said cause, whereby it was decreed that the said decree of the District Court be in all things affirmed, with costs, as to the said steamboat Joseph Johnson, and your petitioner as claimant, and reversed
335 with costs as to said propeller William F. Burden, which said decree of the said Circuit Court is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore this appellant appeals from the whole of said decree of said Circuit Court, and from so much of said decree of said District Court as condemns the said steamboat Joseph Johnson, or her claimant, to pay any portion of the damages or costs claimed in the said libel, to the Supreme Court of the United States, and respectfully prays that the said decree of the said Circuit Court, and the libel, answers, pleadings, depositions, evidence and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew; and that the said decree of the Circuit Court, and every part thereof, may be reversed, and a decree made dismissing said libel, with costs, or such other decree as to the said Supreme Court shall seem just.

Dated New York, June 14, 1867.

F. A. POTTS.
F. J. FITHIAN, *Proctor.*
CHARLES HENRY SMITH,
Advocate.

336 Endorsed: Supreme Court of the United States. The steamboat Joseph Johnson, (otherwise called the Scranton,)

her tackle, &c., appellants, *vs.* Irwin McCord and the Washington Insurance Company, respondents. Appeal. F. J. Fithian, proctor. Filed June 15th, 1867.

337 Circuit Court of the United States of America for the southern district of New York, in the second circuit.

Bond for costs.

IRWIN MCCORD and THE WASHINGTON Insurance Co., libellants and appellants,
vs.
THE STEAMBOAT JOSEPH JOHNSON, her tackle, &c., Frederick A. Potts, claimant, libelled with the propeller Wm. F. Burden, respondents and appellants.

Know all men by these presents, that we, Frederick A. Potts and George H. Potts, are held and firmly bound unto the above-named libellants and appellees, in the sum of twenty thousand dollars, to be paid to the said libellants and appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the seventeenth day of June, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas the above-named Frederick A. Potts, cl'mt, has prosecuted his appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit by the judge of the Circuit Court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named obligors shall prosecute the said appeal to effect, and answer all damages and costs if they fail to make their said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

F. A. POTTS.
GEO. H. POTTS.

Sealed and delivered, and taken and acknowledged, this 17 day of June, 1867, before me.

R. E. STILWELL, *U. S. Com'r.*

338 UNITED STATES OF AMERICA, *Southern District of New York, ss:*

Frederick A. Potts and George H. Potts, being severally duly sworn, each depose and say, and each for himself saith, that he is

worth the sum of twenty thousand dollars over and above all his just debts and liabilities.

F. A. POTTS.
GEO. H. POTTS.

Sworn to this 17th day of June, A. D. 1867, before me.
R. A. STILWELL, U. S. Comm'r.

I approve of the foregoing bond as to its form and the sufficiency of the sureties thereon.
June 17, 1867.

SAM'L BLATCHFORD, *U. S. Judge.*

Endorsed : U. S. Circuit Court. Irwin McCord and Washington Ins. Co., libellants and appellees, *vs.* The St'boat Joseph Johnson, her tackle, &c. F. A. Potts, cl't. Filed this 17th day of June, 1867.

339 By the Honorable Samuel Blatchford, Judge of the District Court of the United States for the southern district of New York to Irwin McCord and the Washington Insurance Company :

Whereas, Frederick A. Potts, claimant of the steamboat Joseph Johnson, (otherwise called the Scranton,) her tackle, &c., has lately appealed to the Supreme Court of the United States from a decree lately rendered in the Circuit Court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said Irwin McCord and the Washington Insurance Company, against the said steamboat Joseph Johnson, her tackle, &c., and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, the 17th day of June, in the year of our Lord, and of the independence of the United States the ninety-first.

SAM'L BLACHFORD.

340 CITY AND COUNTY OF NEW YORK, *ss* :

Philip Barnard, duly sworn, says, that on the 17th day of June, 1867, he served upon C. Van Santvoord, proctor for libellants, and upon Burr & Benedict, copies of the within citation, by leaving the same with persons in charge of the offices of said C. Van Santvoord and said Burr & Benedict.

PHILIP BARNARD.

Sworn before me this 4th day of December, 1867.

FRANK H. ANGIER,
Notary Public, New York.

Endorsed : Supreme Court of the United States. The steamboat Joseph Johnson, her tackle, &c., *vs.* Irwin McCord and the Washington Insurance Co. Citation. Filed Dec'r 4, 1867.

341 U. S. Circuit Court, southern district of New York.

Notice of appeal by libellants against the dismissal of the libel against the Wm. F. Burden.

IRWIN MCCORD and THE WASHINGTON INSURANCE Company, libellants and appellants,
ags't
THE STEAMBOAT JOSEPH JOHNSON, (sometimes called the Scranton,) her engine, tackle, &c., and the propeller Wm. F. Burden, her engine, tackle, &c.

The above-named libellants, Irwin McCord and the Washington Insurance Company, hereby state to this honorable court that they appeal and they hereby appeal to the Supreme Court of the United States from so much of the decree made in the above-entitled cause, dated the 6th day of June, 1867, and filed with the clerk of this court on the 8th day of June, 1867, as exempts from fault and reverses the judgment of the District Court as against the propeller Wm. F. Burden, her engine, &c., and dismisses the libel as against her with costs in the Circuit Court, and the District Court to be taxed; and as orders and decrees that Silas Betts, Robert Robinson, and George Arnold, claimants of the propeller Wm. F. Burden, recover of Irwin McCord and the Washington Insurance Co., the libellants herein, the sum of $240\frac{47}{100}$, being their costs in the District Court, and the sum of $\$134\frac{15}{100}$ for their costs in this court, amounting in all to the sum of
342 $\$394\frac{62}{100}$, and that judgment be entered against the said libellants in their favor therefor.

New York, June 18th, 1867.

Yours, &c,

C. VANTSANTVOORD,
Proctor for Lib'lts and App'lts.

To K. G. WHITE, Esq., Clerk of the Circuit Court.

Endorsed: U. S. Circuit Court, S. D. of New York. Irwin McCord and the Washington Ins. Co. *ags't* the steamboat Joseph Johnson, (sometimes called the Scranton,) her engines, &c., and the propeller Wm. F. Burden, her engines, &c. Notice and prayer of appeal. C. Van Santvoord, proctor. Filed June 18, 1867.

343 Supreme Court of the United States.

Petition on appeal by libellants against the dismissal of the libel ags't the Wm. F. Burden &c.

IRWIN McCORD and THE WASHINGTON INSURANCE Company, libellants, *ags't* THE STEAMBOAT JOSEPH JOHNSON, (sometimes called the Scranton,) her engine, tackle, &c., and the propeller Wm. F. Burden, her engine, tackle, &c.

To the honorable the Supreme Court ofthe United States :

The petition and appeal of Irwin McCord and the Washington Insurance Company, the above-named libellants and appellants, respectfully showeth that on or about the 11th day of January, 1864, the above-named libellants filed their libel in the District Court of the United States for the southern district of New York, against the steamboat Joseph Johnson and the propeller Wm. F. Burden, their engines, tackle, &c., and against all persons intervening for their interest therein in a cause civil and maritime of collision, for the recovery of damages sustained by them to the canal boat Kate McCord, and cargo, while in tow of the said propeller Wm. F. Burden, by collision between the said steamboat Joseph Johnson (or Scranton) and said canal boat, while in tow of said propeller, Wm. F.
344 Burden, on the East river, in the State of New York, on the 9th day of December, 1863.

That the respective claimants of each vessel filed their claims thereto and entered into stipulations for costs and value, and thereafter filed their several answers to said libel, and such proceedings were had in the said cause that on the 13th day of March, 1866, a final decree was made and pronounced therein by the said District Court, wherein it was in substance adjudged that the libellants recover against the said steamboat Joseph Johnson and the propeller Wm. F. Burden the sum of eight thousand one hundred and fifteen $\frac{98}{100}$ dollars, together with their costs to be taxed, and which said costs were taxed on or about the 20th day of March, 1866, at $\$422\frac{42}{100}$, and that after such final decree the claimants of the said steamboat Joseph Johnson and the claimants of the propeller Wm. F. Burden, respectively, duly appealed therefrom to the Circuit Court of the United States for the southern district of New York, each of said claimants giving bonds or stipulations with sureties on such appeal in $12,000 to pay all damages and costs, and the said cause was removed thereby to the said Circuit Court, and such proceedings were had in the said Circuit Court that afterwards the said court made a final
345 decree in the said cause dated June 6th, 1867, whereby it was ordered and adjudged that said decree of the District Court for the southern district of New York be affirmed as against the steamboat Joseph Johnson, her engine, tackle, &c., as solely in fault

for the damages arising from the collision in the pleadings mentioned, and that the libellants, Irwin McCord and the Washington Insurance Co., recover against the said steamboat Joseph Johnson, (otherwise, &c.,) her engine, &c., or her said claimants, the sum of nine thousand four hundred and fifty-five $\frac{26}{100}$ dollars as damages, costs, and interest from date of the decree as therein contained, to which reference is had.

And it was further ordered, adjudged, and decreed by the said Circuit Court, that the decree of the said District Court be reversed as against the propeller Wm. F. Burden, her engine, &c., and the libel dismissed as to her with costs in the Circuit Court, and the District Court to be taxed, and that the claimants of the propeller Wm. F. Burden recover of the libellants herein the sum of three hundred and seventy-four $\frac{62}{100}$ dollars, their costs in the District and Circuit Courts, and that judgment be entered against the said libellants therefor.

And these appellants are advised and insist that said decree is erroneous, inasmuch as it exempts from fault and reverses the
346 judgment of the District Court as against the propeller Wm. F. Burden, her engine, &c., and dismisses the libel as against her with costs to be taxed, and orders and decrees that the claimants of the propeller Wm. F. Burden recover of the libellants herein the sum of $374\frac{62}{100}$, being their costs in the said District and Circuit Courts, and that judgment be entered against the said libellants in their favor therefor.

Wherefore these appellants appeal from so much of the said decree of said Circuit Court as exempts from fault and reverses the judgment of the District Court as against the propeller Wm. F. Burden, her engine, and dismisses the libel as to her with costs against the libellants as aforesaid, to the Supreme Court of the United States, and respectfully prays that the said decree of the said Circuit Court, and the libel, answer, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay; and that the said Supreme Court will proceed to hear the said cause anew, and that so much of the decree of the Circuit Court as exempts from fault and reverses the judgment of the District Court as against the propeller Wm. F. Burden her engines
347 dismisses the libel as to her with costs against the libellants as aforesaid, may be reversed, and a new decree made adjudging her to be likewise in fault with the Joseph Johnson, and condemning as well the Wm. F. Burden and her sureties, as the Joseph Johnson and her sureties, for the libellant's damages from said collision, together with costs, or such other or further decree made as to the said Supreme Court shall seem just; and your petitioners will ever pray.

Dated New York, June 18th, 1867.

C. VAN SANTVOORD,
Proctor for Libellants.

Endorsed: Supreme Court of the United States. Irwin McCord & The Washington Insurance Co. *vs.* The steamboat Joseph John-

son, (sometimes called the Scranton,) her engine, tackle, &c., and the propeller W. F. Burden, her engine, tackle, &c. Petition on appeal by lib'ts ag'st dismissal of libel ag'st the Wm. F. Burden. C. Van Santvoord, proctor for lib'l'ts. Due service of copy of the within petition admitted. Dated June 18th, 1867. Benedict Burr & Benedict, cl'm't's proctors. Filed June 18th, 1867.

348

349 *Bond of appeal by libellants ag'st dismissal of libel against the Wm. F. Burden.*

IRWIN MCCORD and THE WASHINGTON INSURANCE COMPANY, libellants,
ag'st
THE STAMBOAT JOSEPH JOHNSON, (sometimes called the Scranton,) her engine, tackle, &c., & The Propeller Wm. F. Burden, her engine, tackle, &c.

U. S. CIRCUIT COURT,
Southern District of New York:

Know all men by these presents, that we, George C. Satterlee, of New Hamburgh, State of N. Y., and Wm. A. Scott, of city, county and State of New York, are held and firmly bound unto Silas Betts, Robert Robinson, and George Arnold, claimants of the propeller Wm. F. Burden, in the sum of one thousand dollars, to be paid to the said obligors, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 18th of June, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas the above-named libellants have prosecuted an appeal to the Supreme Court of the United States to reverse so much of
350 the decree rendered in the above-entitled suit by the judge of the Circuit Court of the United States for the southern district of New York as exempts from fault and reverses the judgments of the District Court as against the propeller Wm. F. Burden, her engine, &c., and dismisses the libel as to her, with costs to be taxed, and as orders and decrees that the claimants of the propeller Wm. F. Burden recover of the libellants herein the sum of $374 62, being their cost in the said District and Circuit Courts, and that judgment be entered against the said libellants in their favor therefor:

Now, therefore, the condition of this obligation is such, that if the above-named libellant shall prosecute such appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[L. S.] GEO. C. SATTERLEE.
[L. S.] A. SCOTT.

for the damages arising from the collision in the pleadings mentioned, and that the libellants, Irwin McCord and the Washington Insurance Co., recover against the said steamboat Joseph Johnson, (otherwise, &c.,) her engine, &c., or her said claimants, the sum of nine thousand four hundred and fifty-five $\frac{26}{100}$ dollars as damages, costs, and interest from date of the decree as therein contained, to which reference is had.

And it was further ordered, adjudged, and decreed by the said Circuit Court, that the decree of the said District Court be reversed as against the propeller Wm. F. Burden, her engine, &c., and the libel dismissed as to her with costs in the Circuit Court, and the District Court to be taxed, and that the claimants of the propeller Wm. F. Burden recover of the libellants herein the sum of three hundred and seventy-four $\frac{62}{100}$ dollars, their costs in the District and Circuit Courts, and that judgment be entered against the said libellants therefor.

And these appellants are advised and insist that said decree is erroneous, inasmuch as it exempts from fault and reverses the
346 judgment of the District Court as against the propeller Wm. F. Burden, her engine, &c., and dismisses the libel as against her with costs to be taxed, and orders and decrees that the claimants of the propeller Wm. F. Burden recover of the libellants herein the sum of $\$374\frac{62}{100}$, being their costs in the said District and Circuit Courts, and that judgment be entered against the said libellants in their favor therefor.

Wherefore these appellants appeal from so much of the said decree of said Circuit Court as exempts from fault and reverses the judgment of the District Court as against the propeller Wm. F. Burden, her engine, and dismisses the libel as to her with costs against the libellants as aforesaid, to the Supreme Court of the United States, and respectfully prays that the said decree of the said Circuit Court, and the libel, answer, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay; and that the said Supreme Court will proceed to hear the said cause anew, and that so much of the decree of the Circuit Court as exempts from fault and reverses the judgment of the District Court as against the propeller Wm. F. Burden her engines
347 dismisses the libel as to her with costs against the libellants as aforesaid, may be reversed, and a new decree made adjudging her to be likewise in fault with the Joseph Johnson, and condemning as well the Wm. F. Burden and her sureties, as the Joseph Johnson and her sureties, for the libellant's damages from said collision, together with costs, or such other or further decree made as to the said Supreme Court shall seem just; and your petitioners will ever pray.

Dated New York, June 18th, 1867.

C. VAN SANTVOORD,
Proctor for Libellants.

Endorsed: Supreme Court of the United States. Irwin McCord & The Washington Insurance Co. *vs.* The steamboat Joseph John-

son, (sometimes called the Scranton,) her engine, tackle, &c., and the propeller W. F. Burden, her engine, tackle, &c. Petition on appeal by lib'ts ag'st dismissal of libel ag'st the Wm. F. Burden. C. Van Santvoord, proctor for lib'l'ts. Due service of copy of the within petition admitted. Dated June 18th, 1867. Benedict Burr & Benedict, cl'm't's proctors. Filed June 18th, 1867.

348

349 *Bond of appeal by libellants ag'st dismissal of libel against the Wm. F. Burden.*

IRWIN MCCORD and THE WASHINGTON INSURance Company, libellants,
ag'st
THE STAMBOAT JOSEPH JOHNSON, (sometimes called the Scranton,) her engine, tackle, &c., & The Propeller Wm. F. Burden, her engine, tackle, &c.

U. S. CIRCUIT COURT,
Southern District of New York:

Know all men by these presents, that we, George C. Satterlee, of New Hamburgh, State of N. Y., and Wm. A. Scott, of city, county and State of New York, are held and firmly bound unto Silas Betts, Robert Robinson, and George Arnold, claimants of the propeller Wm. F. Burden, in the sum of one thousand dollars, to be paid to the said obligors, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 18th of June, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas the above-named libellants have prosecuted an appeal to the Supreme Court of the United States to reverse so much of
350 the decree rendered in the above-entitled suit by the judge of the Circuit Court of the United States for the southern district of New York as exempts from fault and reverses the judgments of the District Court as against the propeller Wm. F. Burden, her engine, &c., and dismisses the libel as to her, with costs to be taxed, and as orders and decrees that the claimants of the propeller Wm. F. Burden recover of the libellants herein the sum of $374 62, being their cost in the said District and Circuit Courts, and that judgment be entered against the said libellants in their favor therefor:

Now, therefore, the condition of this obligation is such, that if the above-named libellant shall prosecute such appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[L. S.] GEO. C. SATTERLEE.
[L. S.] A. SCOTT.

Sealed, delivered, taken, and acknowledged, as to George C. Satterlee, this 18th day of June, 1867, before me.

R. E. STILWELL,
U. S. Comm'r.

351 Sealed, delivered, taken, and acknowledged, as to Wm. A. Scott, this 18th day of June, 1867, before me.

R. E. STILWELL,
U. S. Comm'r.

UNITED STATES OF AMERICA,
Southern District of New York:

George C. Satterlee, of New Hamburg, State of New York, being duly sworn, does depose and say, that he is a freeholder within this State, and that he is worth the sum of two thousand dollars over and above all his just debts and liabilities.

GEO. C. SATTERLEE.

Sworn to before me this 18th day of June, 1867.

R. E. STILWELL,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

William A. Scott, of the city, county and State of New York, being duly sworn, does depose and say, that he is a freeholder within this State, and that he is worth the sum of two thousand dollars over and above all his just debts and liabilities.

W. A. SCOTT.

Sworn to before me this 18th day of June, 1867.

R. E. STILWELL,
U. S. Com'r.

352 Endorsed: U. S. Circuit Court, southern district of New York. Irwin McCord & The Washington Insurance Co., libellants, ag'st the steamboat Joseph Johnson, (sometimes called the Scranton,) her engine, &c., and the propeller W. F. Burden, her engine, &c. Bond on appeal by libl'ts ag'st dismissal of libel ag'st the W. F. Burden. C. Vansantvoord, proctor for l'bts. I approve of the within bond. W. D. Shipman, judge. Filed June 18th, 1867.

353 By the Honorable William D. Shipman, one of the judges of the Circuit Court of the United States for the southern district of New York, to Silas Betts, Robert Robinson, George Arnold, claimants of the propeller Wm. F. Burden, her engine, &c:

Whereas Irwin McCord and The Washington Insurance Company, libellants, have lately appealed to the Supreme Court of the United States from so much of a decree lately rendered in the Circuit Court of the United States for the southern district of New

York as exempts from fault and reverses the judgment of the District Court as against the Propeller Wm. F. Burden, her engine, &c., and dismisses the libel as to her, with costs to be taxed, and as orders and decrees that the claimants of the Wm. F. Burden recover of the libellants herein the sum of $364 62, being their costs in the District and Circuit Courts, and that judgment be entered against the said libellants, in their favor therefor, stating that the decree is erroneous, as in their petition of appeal alleged, and praying that their said cause may be heard anew, and that the said decree may be reversed so far as it exempts from fault and reverses the judgment of the District Court as against the propeller W. F. Burden, her engine,
354 &c., and dismisses the libel as to her, with costs to be taxed, and as orders and decrees that the claimants of the propeller Wm. F. Burden recover of the libellants herein the sum of $374 62-100, being their costs in the said District and Circuit Courts, and that judgment be entered against the said libellants, in their favor therefor; and the said Irwin McCord & the Washington Insurance Company having [having] duly entered their said appeal to the Supreme Court of the United States from so much of said decree as aforesaid, and filed the security required by law:

You are, therefor, hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, the 18th day of June, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States the ninety-first.

WM. D. SHIPMAN, *Judge.*

355 Endorsed: U. S. Supreme Court. Irwin McCord & the Washington Insurance Company ag'st the steamboat Joseph Johnson, (sometimes called the Scranton,) her engine, &c., and the propeller Wm. F. Burden, her engine, &c. Citation on appeal by l'bl'ts ag'st dismissal of libel as ag'st The W. F. Burden. C. Vansantvoord, proctor for lib'ts. Due service of a copy of the within citation admited. Dated. Benedict, Burr & Benedict, cl'mts' proctor. Filed June 18th, 1867.

For the Court

Supreme Court

OF THE UNITED STATES.

THE STEAMBOAT JOSEPH JOHNSON, &c.,

Appellant.

vs.

IRWIN McCORD and the WASHINGTON INSURANCE COMPANY,

Respondents.

POINTS FOR F. A. POTTS,

CLAIMANT OF STEAMBOAT "JOHNSON."

F. J. FITHIAN,

Proctor and Advocate.

NEW YORK:

EVENING POST STEAM PRESSES, 41 NASSAU ST., COR. LIBERTY.

1870.

Evening Post Steam Presses, 41 Nassau St., cor. Liberty, N.

Supreme Court

OF THE UNITED STATES.

The Steamboat Joseph Johnson, (called "Scranton,") her Tackle, &c. Frederick A. Potts, claimant,
Appellant,

vs.

Irwin McCord and The Washington Insurance Company,
Respondents.

Points and Brief in behalf of the Appellant.

On the 9th of December, 1863, the above named respondent, Irwin McCord, was the owner of a canal boat called *Kate McCord*, which boat, while being towed up the East river by the propeller tug *William F. Burden*, came in collision with the above named steamboat, Joseph Johnson, (sometimes called the "Scranton.") The canal boat had a cargo of wheat in her hold. By the collision the canal boat and her cargo were seriously injured. The respondent, The Washing-

ton Insurance Company, had insured the cargo. It thereupon paid the loss and damage to the cargo, and took asssignment of the claim; and, joining with McCord, the owner of the canal boat, filed a joint libel against both steam vessels, to recover for the several and respective damage and injury to the canal boat and the cargo of grain—alleging that both the *Johnson* and the *Wm. F. Burden* were at fault in the matter, and asking a decree against both.

The District Court on the trial held, that both steam-vessels were in fault, and decreed against them jointly for the whole loss. The claimants of both vessels appealed to the Circuit Court. That Court on trial, reversed the decree of the District Court, so far as it affected the propeller *Burden*, and charged the whole loss upon the steamboat *Joseph Johnson*, on the ground she was wholly in fault.

From this decree the claimant of the *Joseph Johnson* appeals to this Court, and the libellants do likewise. The evidence is somewhat voluminous, but not very conflicting on the material points.

The following facts are substantially undisputed, viz.:

On the 9th of December, 1863, in the forenoon the canal boat *Kate McCord*, laden with about seven thousand bushels of wheat, was lying at the Atlantic docks, in New York harbor. That she was then and there taken in tow by the steam propeller *Wm. F. Burden*, (a steam tug used for towing about the harbor,) to be towed up the East river, to pier No. 44, on the New York side, there to discharge her cargo.

That the canal-boat was lashed to the left or port side of the propeller, and thus fastened together the boats were proceeding along up the Brooklyn shore of the East river. That at the same time the steamboat *Joseph Johnson*, having in tow two canal barges (one on each side), with usual fastenings, was proceeding down the East river on a trip from near Corlieur's Hook, on the New York side, to land and take up another tow

just at the lower Fulton Ferry dock, on the Brooklyn side.

That at this time in the day (about 11 to 12 o'clock, M.) there was a strong ebb tide setting down the river towards the bay, but that by reason of a bend in the river just at the point where the Fulton Ferry, on the Brooklyn side, is located, an eddy or reflux tide is caused to flow up the river, close in shore, on the Brooklyn side, for some little distance below the Fulton Ferry dock. That the propeller *Burden*, with the *McCord* in tow, was going up in this eddy. That the *Johnson*, with her two tow-boats, was coming on a course angling down and across the river, heading for the Fulton Ferry dock, on the Brooklyn side, in a course that would cross the line of direction of the *Burden*. That thus the two boats approached each other, each continuing on her course, the *Johnson* to land at the Fulton Ferry dock, the other on a course to head the *Johnson* off from landing. When at a point just outside of and opposite, or a little below the lower pier of the Fulton Ferry, on the Brooklyn side, the two vessels came in collision, as before stated. It is also agreed by all the witnesses on the part of the propeller *Burden*, that those on board of her saw the steamboat *Johnson* coming down and across the river when the *Burden* was at a point just above Wall street Ferry (say half a mile below Fulton Ferry). It is also agreed, or not disputed, that those on board the steamboat *Johnson* did not see the *Burden* until the latter was opposite De Forest's stores, about 600 feet below the Fulton Ferry.

The pilot of the *Burden* testified (Error Book, page 118) that when he first saw the *Johnson* she was out towards the middle of the stream, nearer the Brooklyn shore than the middle *of the stream*, headed in a little. (Book, page 121.) The captain of the *Kate McCord*, "Francis Weaver," swears (book, page 32) that before he heard signals or whistles, his boat was running straight up the Brooklyn shore, and the *Johnson* was coming down, "inclining towards the Brooklyn shore." All the

witnesses agree to this substantially. It will be seen then by reference to the map and the course of the river, that this position and direction brought the two vessels very nearly "head and head," or "end on," the *Johnson* heading a little inside or towards the Brooklyn shore of the course of the *Burden* In this course the vessels approached each other until the *Burden* was off "Deforest's Stores, (evidence of her pilot, Book 118) which by map and measurement, is on a shore line about six hundred feet below the point of collision. And the *Johnson* was off "Marston and Power's" docks, about the same distance above the point of collision, and which, allowing for distance in the river, would leave the two steamers at least *fifteen hundred feet* apart, at which point the movement or manoeuver commenced, upon, and by reason of which the Court below has condemned the *Johnson*, as wholly in fault for the subsequent collision. That manoeuver was to put the *Johnson's* helm some to starboard, and simultaneously therewith blow *two* blasts with his steam whistle. The movement of the helm had the effect to head the *Johnson* in towards the Brooklyn shore, while all the witnesses on both sides agree that the *two* whistles were understood and established signals, indicatory, and intended to apprise the other boat of this movement of the helm, and of the intention and desire of the boat giving the signals, to pass to the *left* and inside, instead of the right and outside.

The evidence as to this movement and the signals, and the reason therefor, will be found in the testimony of the captain and pilot of the *Johnson*, (book page 56 to 60), and "Edward Morris," the wheelsman (book page 93–94). Immediately on starboarding the helm the engine was slowed, and whistles blown. It is apparent those acts were as near simultaneous as possible. The only authoritative rules of navigation then existing were those prescribed by the "Supervising Inspectors," January 1st, 1858, for the conduct of passenger steamers, and they were substantially as follows:

Rules.

RULE 1.—When steamers meet "head and head," it shall be the duty of each to pass to the right, or on larboard side of the other, and either pilot, upon determining to pursue this course, shall give as a signal of his intention one short and distinct blast of his steam-whistle, which the other shall answer promptly by a similar blast of the whistle. But if the course of each steamer is so far on the starboard of the other as not to be considered by the rules as meeting "head and head," or if the vessels are approaching in such a manner, that passing to the right (as above directed), is unsafe, or contrary to rule, by the pilot of either vessel, the pilot so deciding shall immediately give two short and distinct blasts of his steam-whistle, which the other pilot shall answer by two similar blasts of his whistle, and they shall pass to the left, or on the starboard side of each other. NOTE.—In the night, steamers will be considered meeting "head and head" so long as both the colored lights of each are in view of the other. In the day, a similar position will also be considered "head and head."

RULE 2. When steamers are approaching each other in an oblique direction (as shown in diagram of fifth situation), they will pass to the right, is if meeting "head and head," and the signal by whistle shall be given and answered promptly, as in that case specified.

RULE 3. If, when steamers are approaching each other, the pilot of either vessel fails to understand

the course or intention of the other, whether from the signals being given or answered erroneously, or from other cause, the pilot so in doubt shall immediately signify the same by giving several short and rapid blasts of the steam whistle, and if the vessels shall have approached within half a mile of each other, both shall be immediately slowed to a speed barely sufficient for steerage way, until the proper signals are given, answered and understood, or until the vessels shall have passed each other.

RULE 6. The signals, by blowing of the steam whistle, shall be given and answered by pilots, in compliance with these rules, not only when meeting "head and head," or nearly so, but at all times, when passing or meeting, at a distance within half a mile of each other, and whether passing to the starboard or larboard.

N. B. The foregoing rules are to be complied with in all cases, except when steamers are navigating in a crowded channel or in the vicinity of wharves; under these circumstances steamers must be run and managed with great caution, sounding the whistle as may be necessary, to guard against collisions or other accidents.

These rules, though made for passenger steamers, have been adopted by the persons engaged in navigating vessels about New York harbor, with such slight modifications as necessity may require. It is therefore agreed by all the witnesses in this case, who speak on the subject, that the practice and well known rule of the harbor, based upon the above regulations, was, at the time of the collision, that when two vessels were approaching each other, either "head and head," or nearly so, and either

vessel desired and intended to pass to the *left* instead of the right; it was her privilege so to do on giving to the other vessel knowledge of such intent by the well understood signal of *two* blasts on the steam whistle. (See testimony of Wm. Cavin, Error Book, page 82–3; Capt. Walsh, page 56.)

In behalf of the *Johuson* it is claimed that the burden of proof is upon the libellants to show fault on their part, or the libel must be dismissed as to us. It is not enough to show that the libellants were injured by one or the other, or both of the steamboats, and then call upon us to prove ourselves free from fault, and some other persons negligent. It is not enough to show a case of doubt, or even probability against us. The libellants must prove by clear and satisfactory evidence that the injury resulted, in whole or in part, from the "negligence," "fault" or want of skill of the managers of the *Johnson*.

1st Parsons Maratime Law, 187, 192.
The Ella & Abby, 1st Betts Rep., 335.
Crosly *vs. The Penguin*, 21 Pick, 254.
The Tugg *William Young*, 2d Betts R., 38, 41.
The Steamer *Express*, 2d Do., 268.

First.

The steamboat *Johnson* was not in fault in this collision, but was in all respects properly managed and handled.

1st. There is no pretence that the *Johnson* was any way deficient in machinery or tackle, she was well "manned and found," and commanded by a competent and skillful pilot, of fourteen years experience. This pilot was at the wheel, together

with a competent assistant, (see evidence of Thomas Walsh, Error Book, page 55, and Edward Morris, Book, page 92, 93.) There was also a competent engineer and assistant at the engine, (see evidence of Phillips, Book, page 127.)

2d. There was no carelessness or negligence on the part of the *Johnson* in attempting, as she did, to go into her place of destination; the Fulton Ferry pier, at the time and manner she did, with the *Burden*, in the position, she was when the *Johnson* attempted to land, provided he gave the proper signals and exercised ordinary care in and about the doing of the act. This, it is submitted, she did do to the fullest extent.

3d. The *Johnson* had a perfect right to be where she was, and to land and "pick up her boat" at the place of her destination, the Fulton Ferry pier. That was her place of destination, she must land there at some time or in some manner or that particular voyage would be broken up and destroyed. There was no right in any other vessel, for mere convenience, to prevent her so landing.

4th. It will be observed that during all the time the *Johnson* was approaching her point of landing and destination, and for a long distance out and up the river she was in full view of the *Burden*. And all the witnesses on board the *Burden*, and the canal boat in tow of her, agree and swear that they saw the *Johnson* heading for the Fulton Ferry pier, when the *Burden* was just above Wall Street Ferry, (see the testimony of all the witnesses for the *Burden*.) The Wall Street Ferry is over half a mile below the point of collision.

This important fact was apparent to the pilot of the *Johnson*, and he had, therefore, a right to suppose that his purpose to touch at the Brooklyn shore at or near the point towards which she was heading was seen, and understood by the pilot of the *Burden*, and that he would govern himself accordingly. All this time it is important to observe that by reason of the bend in the river just at the Fulton Ferry, the *Burden* was heading in a course that would have carried her diagonally across the river to the New York side after passing the ferry. Or, in other words, she was heading directly towards the *Johnson*, which was approaching farther up and farther out in the river, heading for The Fulton Ferry pier.

5th. But not relying alone upon the fact that her (the *Johnson's*) intention to pass in ahead and to the starboard of the approaching propeller *Burden*, was apparent and plain to be seen: the pilot of the *Johnson* made this intention known to the other boat by the signal required in such cases by the foregoing rules and the practice of navigation, viz., by *two blasts of his steam whistle.*

That the pilot of the *Johnson* did, in fact, give this signal of two whistles is established by overwhelming evidence. Captain Walsh, pilot of the *Johnson*, swears that he blew these whistles with his own hands, and heard the same, (Book pp 56, 57.) Edward Morris swears he saw the Captain do it, and heard the whistles, (Book p. 93.) And every one of the witnesses on board the *Johnson* and her barges swear affirmatively and positively that they heard these two whistles. While on the other hand part of the men on board the *Burden* admit they "heard whistles," but how many, or from which boat, they could not tell. And the pilot of the *Burden* himself admits that he "heard the *Johnson's* whistle," but he

could not tell whether it was one or two, (see cros-examination of Fisher, minutes, book, p. 118.) Now, against this body of affirmative evidence the testimony of the two or three excited canal boatmen, to the effect that they did not hear whistles, is entitled to no weight whatever. It is a maxim of evidence that the positive affirmative assertion of one credible witness who swears that he did hear or see a thing, establishes the fact against any number of witnesses who say they did not hear or see it.

6th. At this point, however, I am met with the objection that it was an act of negligence and recklessness on the part of the pilot of the *Johnson*, thus to attempt to pass to the starboard or inside the *Burden* when the two vessels were in the relative positions they then were. And it was on this ground mainly that the "*Johnson*" was condemned in the Circuit Court. To this I answer, 1st. This Court ought to give considerable weight and deference to the judgment and opinion of so competent a pilot as the person in charge of the "*Johnson.*" He had been in the business over twelve years. In all that time he must have acquired very accurate knowledge and sound judgment of distances, and the space required in which to execute with safety any nautical movement. There was no motive for negligence, but all for the reverse. And there is not a word of evidence even tending to show any ill will or bad faith on the part of the pilot of the *Johnson* towards the other boat or its navigators. And during the whole movement it appears affirmatively that the pilot of the "*Johnson,*" handled his vessel with entire coolness and self-possession, doing every thing proper under the circumstances. If he erred then in his attempt to pass to the left or starboard side of the "*Bur-*

den," it was a deliberate error in judgment, not arising from any deficiency in skill or disturbance of the faculties. Before the Court will suspect such error it should require very clear proof of it from other evidence than the fact that a collision occurred. I submit there is no proof whatever that such movement was neglegent or erroneous. On the contrary, the whole evidence taken together, and fairly considered and interpreted, will sustain the pilot of the "*Johnson*" in the course pursued by him because — 2d. He violated no rule of navigation by the attempt of itself alone, to pass to the left. For in the crowded harbor, vessels from necessity pass each other as often on one side as the other. The exception of keeping to the left, is quite as broad and general as the rule of going to the right. 3d. The vessels were approaching each other "head and head," the *Johnson* if anything, headed a little to the starboard or inside the *Burden*. 4th. When the pilot of the *Johnson* put his helm to starboard and sounded two whistles, thus commencing the movement for which he is censured, the two vessels were at least fifteen hundred feet apart. This is shown by actual measurement of the ground between the two points opposite which the two vessels were, by the scale upon the map, and by the things done on both boats between the blowing of the whistles and the collision, showing that the two vessels must have passed through this much space before colliding. The witness William Cavin is the only one on either side who undertakes to censure the conduct of the pilot of the *Johnson* in this respect. It is apparent from his evidence that he was mistaken as to the relative position of the vessels, when the movement begun. He was steering and attending to the course of his own vessel, and it is clear that

he did not take any notice of these two vessels until they were on the point of colliding. He says they were not one hundred feet apart when he first saw them. (Book, page 82.) Of course that was after the "*Johnson*" had blown the whistles and starboarded her helm. But Cavin swears, however, that the movement of the "*Johnson*" would be safe, if there were three hundred yards space. (Book, page 81.) Here there were 500 yards. 5th. It is clear that the acts of putting the helm to starboard and blowing two whistles on the part of the pilot of the "*Johnson*" were substantially simultaneous. The pilot thinks he sounded the whistles first. The wheelsman with him at the time, in the order of narration gives precedence to the order to starboard. but follows immediately by stating the blowing of the whistles and the slowing of the *Johnson's* engine. (Book, page 93, 94.) That the *Johnson's* engine was slowed is conceded by the captain of the "*Burden*." (See his evidence Book, page 109, 113.) 6th. Here I am met with the objection on this point of both the counsel for the libellants, and the counsel for the "*Burden*," (for they work together in this case,) that when the pilot of the *Johnson* sounded the two blasts on his steam whistle, he should then have stopped his boat, or at least not have proceeded in the direction indicated by his signals, until he had a response from the other boat to the effect that his signals were acquiesced in. This position is untenable and unreasonable. It would make the boat, who by deciding and signalling first, had obtained the right of way, subject entirely to the other boat.

But here was *virtually* a response. The rule of navigation provides *expressly* for the case of a signal given and not understood. Now when two steamers are approaching each other in broad

daylight, and each sees the other, and one sounds a signal such as could without possible question be heard by the other, and gets no response, he has a right to suppose his signal understood and acquiesced in by the other boat. The pilot of the *Johnson* could not possibly come to any other conclusion. He knew his signal must have been heard (as it actually was.) He knew that if the pilot of the *Burden* did not understand his signal. He (Mr. Burden) could signify it in a moment. He got no response, and the conclusion was not only legal but logical that his signal was understood and would be obeyed.

7th. The *Johnson* having thus, by her motions and her whistles, indicated in every way possible that she wished and intended to land at that pier, it was then the right of the pilot to suppose he was understood by the other boat, and in such case it was his bounden duty to continue the course he had indicated, because to attempt then to do otherwise would mislead the other pilot, and produce a collision if the pilot of the *Burden* had (as he ought to have done) minded the *Johnson's* signals.

8th. As soon as the *Johnson* discovered that the *Burden* did not intend to respond to the signals, but was persisting in an unsafe attempt to keep to the right and pass inside, he at once with all the power of his engine stopped, reversed his engine, and got sternway on his boat. It is manifest from the testimony and the surrounding circumstances, that the *Johnson's* engine was backing and that the boat was not going ahead, (Captain Walsh, Book pp. 60, 61,) swears he rung his engine's bell "to stop," and then to "go back" as soon as he saw danger of collision. He had before that slowed his engine when he blew

his whistle. He says his bells were obeyed and his engine was working back, and his boat had no headway at the time of the collision. Now it is not contradicted that he had slowed his engine, and it must be apparent that he did so because he was approaching a landing, and if there had been no obstruction he would not drive full speed into the pier. And to the same effect is the testimony of all the witnesses on board the *Johnson*.

Captain Walsh swears he could stop his boat at one-and-a-half or two turns back of his engine with the speed she had when he rung to go back, (Book p. 62.) Jonas Phillips (in his deposition) swears he did get these bells and answered them, and that he had made two turns and a-half back of his engine before the collison. Walsh says two turns would stop her, and of course a half turn would give her some sternway, (Book p. 127, fol. 258.) Henry Smith who was assisting the engineer, swears to the same thing positively and unequivocally, (Book pp. 72, 73.) But this is not all, Patrick Slavin, captain of the barge on the port side of the *Scranton*, swears that his stern lines were parted by the backward strain of the steamboat before the collision, (Book, fol. 156, 159.) On the cross-examination it was attempted to show by this witness that he was mistaken, and that his stern line was parted by the concussion; but in answer to this the witness swears positively that when the collision occurred, he was standing on the bow of his boat as far forward as he could get, and that he saw his stern line was broken, and heard it "snap" while he was going forward to get that position. Thus showing these lines must have broken by some sudden strain on them before the collision, and what could that be but the backing of the steamboat?

In the face of such testimony, of what value is the evidence of a few men standing off on other vessels, who say it seemed to them as if the connecting rod of the "*Johnson*" or her "wheels" were working ahead? Why all this happened in two or two and a half motions of the connecting rod. How then could the eyes of the witness Craven, who was out in the river steering his own boat, or the eyes of the witnesses on the canal boat *McCord* (who say they were so excited as to jump off) be relied on to show how the *Johnson's* engine was working.

But there were two other facts which, of themselves alone, ought to be conclusive to show that the *Johnson's* engine could not have been working ahead at the collision: 1st. It is shown the *Johnson* was at the time in immediate proximity to her landing place, and if the *Burden* had not been there at all, it was absolutely necessary for her to back to avoid dashing herself to pieces against the pier. 2d The *Johnson* was a large boat with a powerful engine, and it is clear if her engine had been working all the time ahead she would undoubtedly have sunk the propeller and her tow on the spot.

9th. But it may be contended, by the counsel for the *Burden*, that the injury to the canal boat *McCord* could only have been produced by the motion of the steamboat going ahead into the canal boat. But it is clear such is not the case—the injury to the canal boat and the *Johnson's* stem shows (as will hereafter more fully be shown) that it was caused by the *Burden* and her tow going ahead, and at the same time surging sideways with the eddy tide across and against the stem-piece of the steamboat, turning such stem piece round to larboard by the forward motion of

the propeller and cutting in the canal boat's side by the swinging side motion.

10th. The mode and manner in which Capt. Walsh, pilot of the *Jahnson*, attempted to go in (head on) to "pick up" his boat was entirely correct, in the state of the tide as it then was. If the *Johnson* had attempted to go around to the stern of the *Burden* he could not have got his boat, for the eddy tide would have carried him against the pier—if he had attempted the same thing by going alongside head down stream he would have been directly across the Fulton Ferry Slip. His method of navigation, in this respect, is fully sustained by the witness Carvin, called for the *Burden* (see his cross-examination, book, fols. 169, 170). He says, that with the wind and tide as it was he "should have gone in head on and picked "up his boat and backed out," just as Captain Walsh proposed to do.

11th. If it be claimed that Capt. Walsh should have stopped and backed before he discovered any danger or a "mile off," we answer that in that respect the rules do not so require. As it respects distance they are not applicable to harbor navigation (see *exception* to rules above.)

12th. The only witness who attempts to give a nautical opinion adverse to the conduct of the *Johnson*, is the man Cavin. (Book, page 83,) he says he should not think it safe for the *Johnson* to go in there with the *Burden* coming up without giving the *Burden* at least 300 yards; now the answer to this is, first, that when Capt. Walsh blew his two whistles to signify his intention to go in there, the boats were nearly 500 yards apart; and, secondly, by Cavin's rule it would be almost im-

possible for a boat to land on either side of the river, especially so on any day when the vessels happened to be numerous. But to show the value of this witnesses "opinion," it will be well to quote a little from his cross-examination. When he stated a fact or a rule of navigation, he was clear enough, but when he came to an opinion in the given case he was muddy enough. He was asked and answered thus:

Q. What ought the other boat to do if you turned in towards the pier, so that there was room for the other boat to pass?

A. That would be hard work for me to tell what she should do in one sense of the word, because there is something to alter the case; if she wanted to go along in that way and follow it up to the ferry, I could not expect her to want anything else than to go that way; I could not expect her to do anything else than that, but if she would give to me—it is necessary for us to sound the whistles to that effect.

Q. According to your theory a tug boat could never get to the pier to pick up a boat—if boats were coming up they would have to be constantly turned out in the stream?

A. We do not say, because we have got a boat lying at that pier that we have got a right to run over any one; if the law is on his side he has the advantage of me, but if I take the chances and run by him, and escape him, as a man would across a horse's head in the street, and the horse was under headway, if I escape it is all right, but as sure as the sun is, in my way of thinking if that man runs into me, or we come together, the Court must decide who is in fault, and not me. (Error Book, pages 86 and 87.)

For these reasons, then, we insist that the steamboat *Johnson* is shown to be free from fault in the premises.

Second.

It is further submitted in behalf of the claimant of the "*Johnson*," that the propeller "*Burden*" and those in charge of her, were wholly and solely in fault; and that the collision occurred by reason of such fault and negligence.

1st. The position and course held by the *Burden* in the river, was wrong, oppressive, and dangerous of itself, and in violation of the laws of the State of New York. See act of the Legislature entitled "An act in relation to the navigation of the East River by steamboats," passed April 12, 1848, laws of 1848, chap. 321.

The 10th, 11th and 12th Secs. of the Act are as follows:

"§ 10. All the steamboats passing up and down the "East River, between the Battery and the southern ex- "tremity of the city of New York, and Blackwell's "Island, shall be navigated as near as possible in the "centre of the river, except in going in or out of the "usual berth or landing place of such steamboat, and "shall not be propelled at a greater rate of speed than "ten miles an hour."

"§ 11. The master, pilot or engineer of any steamboat "violating either of the provisions of the foregoing sec- "tion, shall be deemed guilty of a misdemeanor; and in "addition thereto, the master, pilot and engineer of such "steamboat, shall respectively be liable to the penalty "prescribed in section nine, title ten, chapter twenty of "the first part of the Revised Statutes, to be sued for "and applied as therein directed."

"§ 12. The owners of every steamboat shall be "deemed responsible for the good conduct of the mas-

" ters employed by them; and if any penalty incurred " by such master, cannot be collected of him by due " course of law, the same may be recovered of the own- " ers of the boat in whose employ he was at the time " such offence was committed, jointly and severally, in " the same manner as if they were sureties of such " master."

(Laws of 1848, Secs. 1, 2 and c.)

It is agreed by all the witnesses that the *Burden* was close in on the Brooklyn shore. Her Captain George Arnold, swears she was within 100 to 150 feet of the Brooklyn wharves (book page 108, fol. 218). This wrongful and illegal position, was the remote and continuing cause of the collision, while the persistence in it, against the law, and in violation of the rules, usages, and signals of navigation in the harbour, by an ignorant and wholly incompetent pilot, was the *immediate* cause of the collision.

The statute above cited has been approved and enforced by the Federal Courts.

See case of the " Bay State " 3 Blatchford, 48. In this case the Court, Nelson, J., said: " This " law as to the navigation of steam boats will be " strictly enforced, and it is high time that the " masters of vessels should learn that they must " obey it, or take the consequences." Also the schooner *E. Scranton*, 3 Blatchford, 50.

Local regulations of ports of a similar character have also been upheld and enforced by the Courts. See " The Steam Boat *New York*," 18 How. R., 223, " James Grey " *vs.* The " Ship *Frasure*," 21 Ho., 226. " The *Bedford*," 5th Blatchford, 200. The " *Burden* " was being na-

vigated in violation of these laws and rules. Every rod of her course previous to the collision she was covering some point on the Brooklyn side at which crossing, vessels might wish to touch, and which they had, as ample a right to do as the *Burden* had to pass up. But which they could not do without manœvering in a contracted and narrow space, if the *Burden* was near such point. If the *Burden* had been out a proper distance in the river where the law, and a due regard for the rights and safety of other vessels required she should be, the *Johnson* would have had ample opportunity to have given her a wide birth to the bow or stern and still have space before reaching the Brooklyn shore to have regained her (the *Johnson's*) position in the river so as properly and successfully to approach her point of landing. But as it was the pilot of the *Johnson* was put to his election either to make the attempt to go to the left and inside of the *Burden*, or be driven away below his landing place—and forced to go about and return again up the river above his point of landing and virtually make his trip over again. And possibly to be again repulsed from his landing place by some other boat crowding along the Brooklyn shore.

In the case of "The *Niagara*," 3d Blatchford Re., 32, it was judicially determined that there was no usage of the port permitting vessels to run along shore in eddy tides.

But waiving for the present the illegality of the course of the *Burden*, I submit,

2d. That it was of itself negligence for her pilot to proceed in the course he did, close along the shore of a narrow straight, where boats were constantly landing at all points. He had no exclusive right of way there, such as would authorize him to require other vessels seeking to land at different

points along his route to keep out of his way. He must be held to have known that other boats were constantly crossing and landing along the Brooklyn shore, and having as good a right to cross as he had to proceed up. He chose for his own convenience to place his vessel close in to what may properly be called "a lee shore," where there was but little if any room to manouvre his vessel, and right in the track of numerous other craft He must be held therefore to a degree of care and caution commensurate with the risks which he thus assumed to encounter.

3d. It is agreed by all the persons on board the *Burden* and the canal boat in her tow, that they saw the *Johnson* coming down and across the river, heading towards the Fulton Ferry, when the *Burden* was a little above Wall Street Ferry, (over half a mile distant.) This of itself, it is submitted, was sufficient notice to the pilot of the *Burden* of the *probable* course and intention of the *Johnson* to put him on his guard.

4th. But Fisher, the pilot of the *Burden*, swears (Book, fol. 238.) that he did not see the *Johnson* until she was opposite Marston & Power's dock, close on to her place of destination. This, if it be true, is evidence of gross carelessness on the part of Fisher, the pilot, and want of attention. It is in evidence that there was no other vessels near, or any other obstructions; and every other man on board of the *Burden* and her tow saw the *Johnson* when she was a long way off, and across the New York side of the river. The captain of the *Kate McCord* (Francis Weaver) swears he saw her when she was over on the New York side, opposite Pier 45, (which by reference to the map will be seen to be half a mile above Fulton Ferry,) and that she was coming down quartering and

pointing towards the Brooklyn shore (Book, page 82.) George Carner, a witness, on board the *Burden's* tow, swears to the same thing, (Book, fol. 84,) and see evidence of Tisdale, (Book, fol. 106,) and Weaver, (Book, fol. 70,) all witnesses on board of the *Burden*, and all swearing to the same thing. Where, then, were the eyes of this pilot? Every other man on board of his boat saw the *Johnson* when she was a long way off. But he whose special business it was to look out, and who was in the best place to do so, did not see her until she was close upon him.

5th. But he did see the *Johnson*, as he swears, before and at the time her helm was put to starboard, and she turned to head in more towards Brooklyn Ferry. Now, by reference to the map, it will be seen that at this point the *Johnson* was off Marston & Power's dock, above the ferry, and the *Burden* was below De Forest's stores, below the ferry. Those two points are from 1,000 to 1,500 feet apart, and the boats were approaching nearly head and head. From this point forward to the collision we want no better evidence than the pilot, Fisher, himself, to show his utter incapacity and want of skill in the management of his boat.

6th. At this point, if the pilot of the *Burden* had any sense or judgment whatever, he might have seen with his eyes that the *Johnson* was heading for a landing place at the Fulton Ferry pier, and that to do so she must of necessity either stop her course and wait for the *Burden* to get by (which she could not do for the tide), or else pass ahead and inside of the *Burden*. And at this point there was ample space and room for the pilot of

the *Burden* to have put his helm to the starboard and passed astern and outside of the *Johnson*.

Willamson *vs.* Barrett, 13 Howard's Rep., 101.

The usage on the Ohio river is, that when steamboats are approaching each other in opposite directions and a collision is apprehended, the boat descending with the current (as the *Burden* was with the eddy), must stop her engine, ring her bell and float. In this case above cited, the ascending boat, being several points to the starboard of the descending one, suddenly put her helm to port and attempted to cross the bow of the descending boat, so as to keep to the right, in accordance with the rule of the road. It was urged, on argument, that the descending boat, seeing this movement, should have backed her engine, and thus avoided the collision. The Court answered, Yes, if she knew which side the ascending boat was intending to pass. But as she did not, the boat descending was not in fault in continuing to float.

7th. But to place the matter beyond all doubt, this pilot of the *Burden* was not only apprized by the motions of the *Johnson* of her intention and wish to pass to the left and ahead of him, but he was informed of that fact by the *Johnson's* steam signals. That the pilot of the *Johnson* blew two steam whistles is proved beyond all controversy, as shown in these points. Now, assuming that the pilot of the *Burden* understood the meaning of whistles, (for if he did not, that of itself is sufficient to decide the case against him,) then did he hear them? He swears he did. But he says he was in doubt whether there was one or two. He says (direct examination): "There was "a whistle blown on the *Johnson*, I cannot say

" whether two or one; I did not understand it; " I did not hear it distinctly." (Book, fol. 238.) And the same on his cross-examination. (Book, fol. 243.) This pilot then heard this whistling from the other boat, and if he was in doubt from his sense of hearing, whether the whistles were one or two, that doubt should have been solved at once by his eyes, for he saw by the actions and motions of the *Johnson* that she was taking a direction and course which would be indicated by two whistles and not one.

8th. But, assuming this pilot of the *Burden* was incapable of understanding that which was apparent to his sense of sight and hearing, " but was in doubt," what then should any pilot of prudence or experience have done under such circumstances? This question is fully answered by the printed Rules of Navigation; by the practice of the river, as sworn to by the witnesses, and by the decisions of the Courts.

1st. The rule says: " If, when steamers are " approaching each other, the pilot of either " vessel fails to understand the course or intention " of the other, whether from the signals being given or answered erroneously, or other cause, the pilot so in doubt shall immediately signify the same by giving several short and rapid blasts of the steam-whistle."

2d. Capt. Cavin (a witness called by the *Burden*) swears to the practice of the river thus: " If I wish to go on the port side of a boat I " blow two whistles. If the captain of that boat " can pass to the port side of me, he will answer " with two whistles. If he cannot, he will sound " one, and then a long one after that, meaning

" that it is impossible for him to do so. That is " the way we do, and the law, as I understand " it, compels us to do so."

Here, then, was the plain rule, and how did this pilot of the *Burden* comply with it? He wholly disregarded it. He admits it in his testimony. He says: "I did not answer it" (the whistle). "I did not fully understand whether it was one or two;" he did not answer because he did not understand, and yet that was the very reason of all others why he should have answered. And this gross neglect on the part of the pilot of the *Burden* had the effect to place the two boats in the position where, so far as the *Johnson* was concerned, it was impossible for her to avoid the collision. The pilots of both boats agree in their testimony that at the time those whistles were blown on the *Johnson*, and heard but not understood by the pilot of the *Burden*, the two vessels, were at least one thousand feet apart, the one opposite Marston & Power's Dock, and the other off De Forest's Stores, and had the pilot of the *Burden*, promptly signalized his misunderstanding of the *Johnson's* whistles, there was ample space and time then for the *Johnson* to stop, or to have ported her helm and gone outside. But the pilot of the *Burden* made no answer, thus betraying the *Johnson* into keeping on her course upon the supposition that her signals were understood and would be heeded, until it was too late for her to do anything but stop, which she did.

9th. But even when the collision became imminent, it was yet in the power of the pilot of the *Burden* to have avoided it by the exercise of the most ordinary skill.

Fisher swears that when he heard and failed to understand the signals of the *Johnson*, he slowed

the engine and came on cautiously. That when he saw the *Johnson* still going on apparently to cross his bow, he stopped his engine (Book, fo. 238) the boats continuing on under headway. Even then it is apparent if the pilot of the *Burden* had put his helm to starboard, he could have passed astern of the *Johnson* and avoided the collision, or if he had simply backed his engine as the *Johnson* did hers, the power of the wheel in connection with the eddy tide that was then setting up there strong, would have swung the stern of the *Burden* out into the river and her head in shore, and she would have drifted right alongside the *Johnson* and no damage would have been done. The pilot swears such would have been the effect of his backing. (See evidence of Fisher, Error Book, fol. 231, and evidence of Walsh, Book, fol. 211.) That it was the duty of the pilot of the *Burden* then to stop and back, and remain so doing until the danger was over, is clear. A very little skill and prudence would have indicated the propriety of such course, especially as the pilot was (as he says) "in doubt about the signals." (Nelson *v.* Leland, 22d How., 48.) In that case the steamboat saw the lights of the approaching boats across a bend in the river and mistook them for a light on shore. Court say, "that is no excuse. "The commander cannot lessen his responsibility "by alleging his mistake. He is bound to make "no mistake, for it is his duty to stop his boat "when in doubt, until he ascertains the facts." But instead of so doing, either of the above, the pilot of the *Burden* "rang his hook on bell, (which means to go ahead fast (Book, fol. 25), put his helm hard to port, and with all the power of his engines persisted in a dangerous and fatal effort to adhere to the rule of keeping to the right, and thus drove his vessel against and across the bow of the *Johnson*, smashing in the side of

his own towed boat, and tearing off the stem of the *Johnson*, in the direction which the *Burden* was going, although to do this he had to change his course so far in shore, that if he had kept on he would have run into the Fulton Ferry Pier. The eddy tide here was setting his boat towards the *Johnson* at least three knots, and he was going ahead, as he admits, three or four knots more, so that his boat was propelled against the bow of the *Johnson* "at a speed of at least six miles per hour," a force amply sufficient to do the injury complained of.

It is clear that this pilot of the *Burden* supposed and willfully acted upon that supposition; that so long as he kept to the right all other vessels must keep out of his way. This is shown by his calling to the *Johnson* and asking if they could not get along without running into him.

Thus this pilot, by his misconduct, first lured the *Johnson* into a position where she was powerless to get out of the way of the *Burden*, and then persisted in putting the *Burden* right in the *Johnson's* way.

10.—Thus it appears that the pilot of the *Burden* was in fault, from first to last. He was in fault, First, in being where he was, and, Second, in not seeing the *Johnson* and understanding by her course and conduct her intention to land, and keeping out of her way, which he admits he did not do. Third, when he heard the *Johnson's* signals, in not answering them, which he admits he did not do. He was in fault, Fourth, when he did not understand the signals, in not stopping and backing his boat, before she came so near as to make a collision imminent, which he admits he did not do. He was grossly in fault, finally, in attempting to pass, in the manner he did, instead of going outside.

11.—Now, what is the excuse sought to be made by the counsel of the pilot, for his thus persisting to keep inside and inshore? It is simply and solely that, if he had gone outside, it would have put him into the ebb tide flowing down the river, and consequently he could not have proceeded as fast as he could with the eddy tide in his favor.

Question (by Benedict). "Can you state whether "there was any danger under these circumstances, "in your getting out into the tide when there was "another vessel approaching you?

Answer. "No more danger, any more than we would "not go up the river very fast we would be in "the ebb tide."

Here we have the whole of it. Although this pilot had the whole river in which to navigate in, outside the "*Johnson*." Yet because to go there would cause him to encounter an adverse tide, he persisted in driving his boat inside, between the bow of the "*Johnson*," and the Brooklyn shore, when there was not only no room to maneuvre his boat, but where it was impossible to pass without collision.

12.—But the frivolousness of this excuse is more and more apparent when we consider the fact, that in order to reach her destination (Pier 44, on the New York side), it was absolutely necessary for the "*Burden*," to go out into this tide. All the witnesses concur that, even if the *Johnson* had not been there. The "*Burden*" in the prosecution of her voyage, would have necessarily to encounter this ebb tide, at or about the Fulton Ferry slip, not 100 feet from where the collision occured. And he in fact did after colliding with us,

steam directly out into this tide, and with a wounded boat in a sinking condition had no difficulty in crossing the river twice, encountering this tide each way, not head to it, but side way, and this without inconvenience. Thus encountering voluntarily and necessarily, then and there that tide in the pretended attempt to avoid which he had smashed his vessel against us, doing the large damage complained of.

In conclusion. On this branch of the subject, we submit, that the whole matter of this collision finds its cause and its solution in the fact that the young man, Fisher, who was then and there engaged in piloting the *Burden*, was entirely destitute of the requisite skill and knowledge, and was wholly incompetent to discharge the responsible duties he had *undertaken*. And in such case his employers must suffer the consequences.

1st. The evidence shows he had not had the experience requisite for a competent pilot in the difficult navigation of the New York harbor and rivers. He testifies, himself, that he was not a pilot. (Error Book, page 120.) It is clear, from his own account of himself, and what is said of him by his employer, Arnold, that all his business had been that of a "deck hand," and occasionally taking his *trick* at the wheel. He said he had only assumed to act as pilot for four or five months before this collision (Book, p. 499), and how much of that time he had been actually employed does not appear. But it does appear, from the testimony of Arnold, the captain, that he had only known him a month before the collision (Book, fol. 1e8), and only hired him temporarily as a substitute for another person he had employed. (*Ibid.*, fol. 220.)

2nd. It is most manifest, from his conduct and management, as hereinbefore set forth, that either from

want of experience, or some other cuase, the pilot, Fisher, did not possess the requisite knowledge and skill to navigate his vessel properly. He was himself conscious of this fact. Hence, in the first emergency that arose he became bewildered, lost his presence of mind, and was himself an element of danger instead of assistance in the case.

For these reasons it is respectfully submitted that the judgment of the Circuit Court should be reversed, and the libel of McCord and the Insurance Company should be dismissed as to the *Johnson*.

Third.

But if the Court should be of opinion that the pilot of the *Johnson* erred in his attempt to pass to the left; that should not excuse the many faults of the *Burden* and her pilot. The rule that when both of two colliding vessels are in fault, the damages shall be charged upon both, is well settled.

The District Court in this case so held,

The Circuit Court, in the case of the *Bay State*, 3d Blatchford, 48, charged the *whole damages* upon the vessel navigating near the shore in violation of the State Statute, before referred to, although in her movements to avoid the other vessel she observed the rule of putting the helm to port and keeping to the right. And the same decision in the case of the *E. C. Scranton*, 3d Blatchford, 50.

The schooner *Bedford* was compelled to sustain half the damage resulting from a collision in the harbor, when her only fault was anchoring too near the track of the ferry boat. She was lying at anchor, and in no manner contributed to the injury, except being where

she was. Certainly the *Burden* cannot escape if that ruling be correct.

(5 Blatchford Rep., 200.)

It is submitted that at least the decree of the Circuit Court should be so modified as to divide the damages in this case.

F. J. FITHIAN,
Proctor and Advocate
For Steamer *Johnson.*

Evening Post Steam Presses, 41 Nassau St. N. Y.

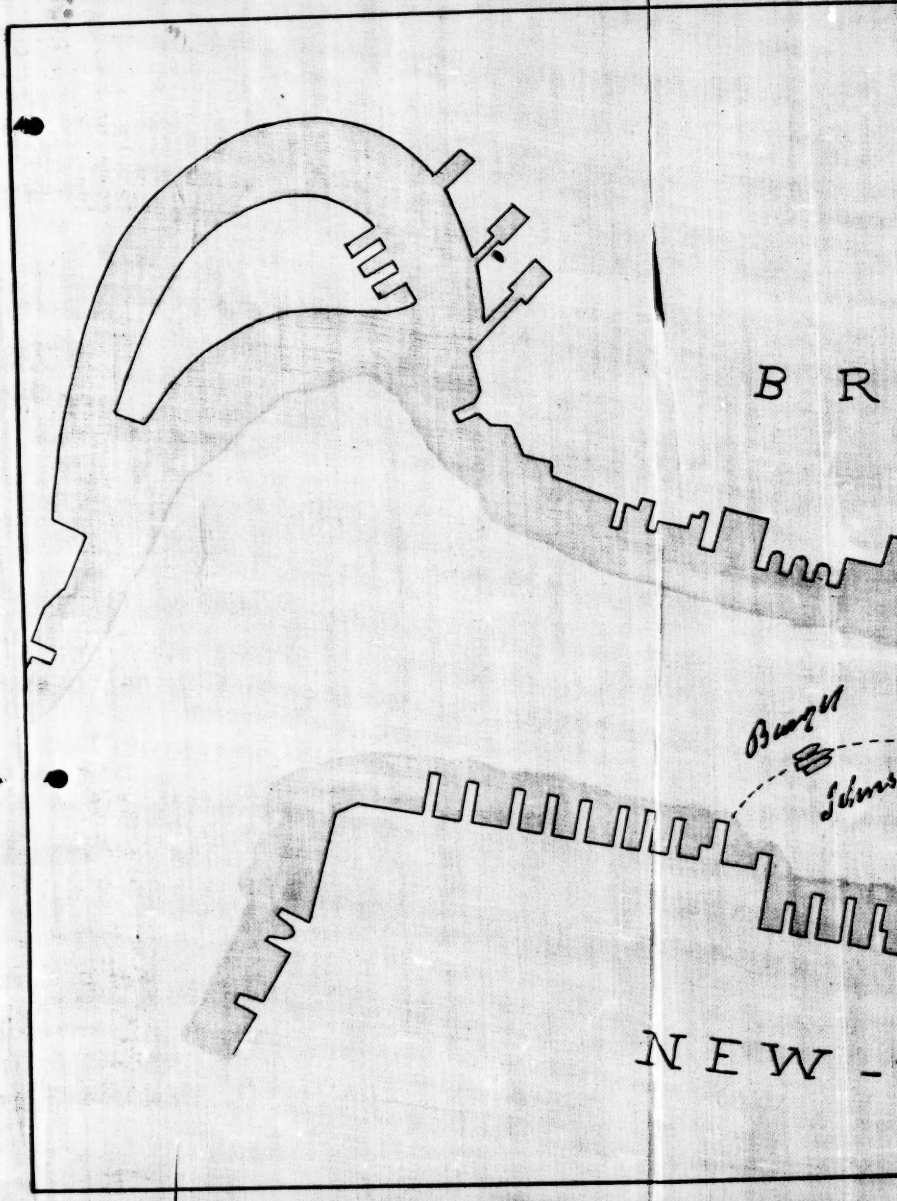
Supreme Court

OF THE UNITED STATES.

Irwin McCord and the Washington Insurance Company, Libellants, *vs.* The Steamboat Joseph Johnson, (sometimes called the Scranton) her tackle, &c., Frederick A. Potts, Claimant and the Steam Propeller *William F. Burden*, her tackle, &c., Silas Betts and others, Claimants.	Nos. 61 and 62.

Brief and Points of Libellants' Counsel.

Statement of the case and points of the libellants, the respondents on the appeal of Frederick A. Potts the claimant of the *Joseph Johnson*, and appellants as against Silas Betts and others claimants of the *William F. Burden*.


B R
NEW-

R O O K L Y N.

W. St.

Tug

Burnham
& Cancel Slip

De Forest's Dock

Edison

-YORK.

POINTS.

I.—The case comes before this Court on the appeal (fols. 333, 335) of Frederick A. Potts, the claimant of the steamboat *Joseph Johnson*, from the decree of the Circuit Court for the Southern District of New York, (fols. 330,332,) affirming the decision of the District Court as against the steamboat *Johnson*, her engine, &c., adjudged by the decree of the Circuit Court to be solely in fault for the damages arising from the collision in the pleadings mentioned, and further ordering and adjudging as in fols. 330, 331.

And also on the appeal of the libellants, (fols. 343 to 347,) from so much of the same decree of the Circuit Court as exempts from fault and reverses the judgment of the District Court as against the propeller *William F. Burden*, her engine, &c., and dismisses the libel as to her, with costs against the libellants.

II.—The suit was brought in the District Court, Southern District of New York, by the libellants Irwin McCord, as owner of the boat *Kate McCord*, and the Washington Insurance Company, as owner of the cargo of wheat on board, and of the claim for damages thereto against the above named steamboat and propeller, to recover the damages to the boat *McCord* and her cargo, from a collision in the East River on the 9th of December, 1863, while the boat *McCord* with her said cargo on board was in tow of the propeller *Burden*.

III.— In respect to an objection raised on the evidence to a recovery by McCord of damages to the boat covered

by insurance under a policy by the Lamar Insurance Company.

It was proved on the trial that Irwin McCord was the owner of the boat *Kate McCord*, and the carrier of the cargo of wheat, (fols. 52, 64.)

On his examination (fols. 61, 62, 63,) it appeared that the boat was insured by the Lamar Insurance Co. to the extent of $2,000, on a valuation of $2,400, and that the Company had paid him a proportion of the loss and damage to the boat from the collision.

In answer to the objection, we refer to the cases of

The propeller *Monticello* v. Mollison, S. C. U. S, Dec., 1854, 17 How., 152, and the cases therein cited, of Yates *v.* White. 4 Bing. N. C., 272.

These cases are authorities to the point that the owner of the boat insured may recover the whole amount of damage to the boat sustained by him, without deduction of an amount covered or paid under a policy of insurance effected by the owner, when the suit is brought by him, even when so brought without the knowledge or consent of the insurance company.

In this case it was shown that the suit was brought in the name of McCord, with the consent of the Lamar Insurance Co., in respect to the damage to the boat, (fo. 104.)

IV.—The title of the Washington Insurance Co. (co-libellant with Irwin McCord, the owner of the boat,) to the cargo on board the *McCord* and the damages thereto, is proved by James C. Daniel, and the exhibits referred to in his testimony, (fols. 64 to 66.)

Ex. B., fol. 267.
Ex. C., fol. 269.

V.—In respect to the circumstances of the collision, the the boat *McCord*, in tow of the *Burden*, was a mere passenger, under the direction, as to her navigation, of the master and pilot of the *Burden*, and no fault contributing to the collision is alleged against her in the pleadings or imputable to her on the evidence.

The question in this branch of the case was, whether the libellants are entitled to recover against both the *Johnson* and the *Burden*, or against only one, and against which one; a question depending upon whether both were in fault, or only one, and which one of them, in producing the collision.

The general proposition of the libellant is that the collision was caused by the mismanagement and fault of both.

The claimants of the *Johnson* impute it to the fault of the *Burden*.

The claimants of the *Burden* impute it to the fault of the *Johnson*.

VI.—The pleadings,—

In the libel, in the third article thereof, it is alleged that the collision and the damage arising therefrom to the boat *McCord* and her cargo, was caused by the mismanagement and carelessness of said steamboat and propeller in not *stopping* and *backing* before said collision, or the not keeping a good look out on said boats, or other negligence, mismanagement and fault of the persons in charge thereof.

In the answer of the claimant of the *Johnson* (otherwise called the *Scranton*) in the sixth article thereof, it is alleged in substance that the collision was caused by the *Burden's* carelessly and negligently persisting in an attempt, after the *Johnson* had changed her course, so as to head directly in toward the Brooklyn shore, at a point where she intended to land, and blown her two blasts of her steam whistle to cross the bows of the *Johnson*, instead of putting her helm a-starboard and passing on the outside of the *Johnson* to the left.

In the answer of the claimants of the *Burden*, in the second article thereof, it is alleged that when the propeller and her tow was a short distance below the Fulton Ferry, the *Johnson* was coming down the river with the tide and was headed toward the Brooklyn side of the river; that the steamer blew her whistle once, the propeller answering her by the same signal, and that instead of stopping or turning to the right, or going under the stern of the propeller and her tow, as under the circumstances she should have done, the said steamboat, *Scranton*, attempted to pass across the bows of the propeller in spite of hails and signals, and without slackening her speed, carelessly and negligently, and in violation of her duty under the circumstances, ran against the canal boat, striking her on the larboard side, and doing her injury.

VII.—*The evidence* to the circumstances of, and bearing upon the collision, and damages (grouping together the witnesses called by each—)

(1.) The libellants called,

1. Irwin McCord, as to age and strength of the boat,

the extent of injury. (Fols. 52, 53, 55, 56, 59. (Not on board at time of collision.)

2. Francis Weaver, master at the time of the *Mc Cord.* (Fols. 66 to 82.)

3. George Carner, hand on the *McCord,* (Fols. 84 into 97.)

4. John A. Horn, (Inspector of W. Insurance Company, who attended to saving the boat and cargo after the collision.) (Fols. 98 to 102.)

5. Frederick F. Lockwood, as to damages (not on board). (Fols. 102 to 103.)

(2.) The claimants of the *Johnson* called as witnesses—

1. Thomas Walsh, captain and pilot of the *Johnson.* (Fols. 116 to 148.)
   Recalled, 210 to 216.
   Recalled, 255.

(2.) Edward Morris, at the wheel of the *Johnson* with Walsh (188 to 205).

3. Jonas Philips, engineer of the *Johnson,* deposition read at fol. 104, found at fols. 257 to 263.

4. Henry Smith, fireman on the *Johnson,* in the engine room, (fo. 148 into 154.)

5. William Burnes, deck hand on the *Johnson,* (fo. 207 to 210.)

6. Patrick Slavin, from boat port side of the *Johnson*, (fos. 155 to near 160.)

7. John Gill, from boat on starboard side of the *Johnson*, (181 to 188.)

8. Benjamin Tilson, ship carpenter, to injury to the *Johnson*, (205 to 207.)

(3.) The claimants of the *Burden* called as witnesses:

1. Solomon H. Tisdale, a passenger on the *McCord*, (104 to 115.)

2. George Arnold, captain and lookout on the *Burden*, (fos. 217 into 232.)
   Recalled, (fo. 254 to 255.)

3. Benedict I. Fisher, Pilot of the *Burden*, at the wheel, (237 into 245.)

4. George E. Warner, deck hand on the *Burden*, (232 into 237.)

5. Egbert N. Brown, engineer of the *Burden*, (247 into 254.)

6. William Cavin, from the steamboat *Saxe*, off in the river, who saw the collision, (fos. 160 to 181.)

VIII.—The collision took place on the 9th Dec., about noon on that day, and the place of the col-

lision established by the general concurrence of the witnesses was below the *lower pier* of the Fulton Ferry slips, on the Brooklyn side of the East River, at a distance below (that is, further down the river) estimated by the witnesses at from 100 to 150 feet, and close into the Brooklyn shore, the point of contact between the bow of the *Scranton* and the canal boat *McCord*, on the port side of the *Burden*, being within the eddy or reflex tide, which was setting up along the shore under the Fulton Ferry Point while the ebb tide out in the river was running down.

The above statement of the place of collision is the result of the testimony of the following witnesses:

Thomas Walsh, captain and pilot of the *Scranton*, (fos. 116, 117, 139, 147, '48.)

George Arnold, Captain and lookout on the *Burden*: At fols. 219, 220, testifies, that when he saw the *Scranton* rounding to, and thought she was coming towards him, the *Burden* was probably 200 or 250 feet below Fulton Ferry lower dock, and in shore about 100 feet or more from the shore, and in the eddy tide, and that he kept right along.

And at fol. 223, that the *Burden* was in shore from the *Scranton* all the time, and that the distance between the *Burden* and the lower Ferry dock at the time of the collision he should think was 150 feet. There might not have been over 100 feet.

William Cavin from the *Saxe*, (out in the river), at fol. 162, testifies, that he saw the boats come together, and he should judge, when they came together, they were not 100 feet from the Fulton Ferry Pier, that is below it.

And at fol. 164, that the *Burden* coming up was within 150 feet off the Brooklyn docks in the eddy tide.

The tide was running down toward the bay about half ebb, and in the then stage of the tide, the current running at the rate of about three miles an hour, set off from the point of the Fulton Ferry on the Brooklyn side of the river, down the river at some distance out from the shore, while an eddy or reflex tide sets up along the shore under the point.

The *Burden* with the boat *McCord* in her tow on her port or larboard side, started about 11 A. M. from the Atlantic Docks, (opposite Governor's Island) in Brooklyn, bound for the ship *Whampoa*, at Pier 44, on the New York side of the East River, (between Rutgers and Jefferson streets, near the point of the hook), and kept along up the East River on the Brooklyn side, close in shore to the place of collision

The *Johnson* had picked up a boat at the Hook (Corlear's Hook, on the New York side, opposite the Wallabout), and proceeded with this boat on one side and another boat on the other side, both light, down and across the river to a point above the Fulton Ferry, on the Brooklyn side of the river, intending to take out and in tow a third boat lying at the lower side of the lower pier of Fulton Ferry, Brooklyn side of the river.

Thomas Walsh, the captain and pilot of the *Johnson*, who was at the wheel, testified (fols. 120 into 122) that the manner in which he intended to take the boat out from the lower side of the lower pier of the Fulton Ferry was to run his boat right in head on to her, get a line to her, and then to back out and so tow her out into the river, and not to make a circle or turn round below, and so to come up to the boat to be taken out.

The above is the import of this testimony, which see fols. 120 into 122.

To this intended manner of approach to the boat to be taken out by the *Johnson* there would seem to have been no objection, but the risk of a collision from the near approach of the *Burden*, close into the shore in the eddy or reflex tide, proceeding up the river in a direc-

tion across the line of direction which the *Johnson* would have to pursue in approaching the boat to be taken in tow in the manner intended, instead of making a circle round below, and up the river to the boat to be taken out by the *Johnson*.

As to to this, see testimony of William Cavin, from the steamboat *Saxe*, who saw the collision, (fol. 164, 165, 169, 170, 172, 173.)

The pilot and the wheelsman of the *Johnson* (Walsh and Morris), when off Marston & Powers' dock or wharf, the first dock above the Fulton Ferry on the Brooklyn side, observed the *Burden* about off De Forest's wharf, the first pier below the Fulton Ferry, coming up close in shore.

The captain and lookout at the time and the pilot of the *Burden* (George Arnold and Benedict J. Fisher), when off De Forrest's dock, below, observed the *Johnson* then above the ferry, about off Marston and Power's dock, the first dock above the Fulton ferry, and further out in the river than was the *Burden*.

The *Johnson* was going before she was slowed, according to the estimate of her master (fols. 123, 141), with the tide six to seven knots by the land; according to the estimate of her engineer (fol. 260), seven knots with the tide.

After the *Burden* had been seen below coming up; by the pilot and wheelsman of the *Johnson* as aforesaid, according to the testimony of the wheelsman of the *Johnson*,

Edward Morris (fols. 189 to 194), the first thing done on the *Johnson*, then being just above the Fulton ferry, was to heave the wheel a-starboard, which threw her head in shore, next she was slowed, then the captain blew his whistle twice, to which he heard no response, next one bell was rung to stop and the engine was stopped; then two bells were rung to reverse the engine, fifteen to twenty seconds before the boats came together (fol. 192), time enough as he believed to get sternway on his

boat if the bells were answered before the collision, and he believed the bells were answered from the fact the backing lines and stern lines of one of the boats in his tow parted (the boat on his port side as it appears from other evidence in the case), which parting of the lines he believed was caused by the backing of the *Johnson*, before the collision in answer to the bells, from the fact which he observed, of the bow of the boat whose backing lines and stern lines were parted swinging on to or pressing against the steamboat before the collision (fol. 200.

According to the testimony of Morris at fol. 202, the *Johnson's* engine was slowed as the wheel was hove over astarboard, between the slowing and stopping was a very short time, and the backing was shortly after that ; as stated by him above (fol. 192,) the ringing of the bells to back was fifteen to twenty seconds before the collision.

The result of this testimony is that the interval of time and space between the putting the helm astarboard on board the *Johnson* moving at the rate of about six miles an hour by the land before she was slowed, and in a current of the velocity of three miles an hour, and the collision was very short, and that the interval between the blowing of the whistles, which, according to Morris was after the helm had been put a-starboard, and the engine had been slowed, was still shorter.

The sequence of what was done on the *Johnson* is differently stated by Thomas Walsh, the captain and pilot of the *Johnson*.

According to Walsh, after he had got down as far as Marston & Powers' dock, and had seen the *Burden* coming up, and saw that she was close in, he blew two whistles to indicate to the *Burden* his intention to go inside of her (fols. 118, 119); then slowed (fol. 123; then the wheel was put a-starboad, which fetched the *Johnson's* head into the eddy, and the eddy acting on her bow, and the ebb tide on her stern fetched her round quick, the *Burden* being then about her length off, about 100 feet off (fols. 124 into 125), then the bells were rung to

go back (fols. 126, 127; and he believes these bells to back were obeyed, and that the *Johnson* was backed from the parting of the stern lines of the boat in his tow (fols. 127, 128); which, however, he did not observe until after the collision (fol. 144); between the bells to back, and the collision may have been twenty seconds or so. (Fol. 144.)

The difference in the order of what was done on the *Johnson*, as stated by Walsh & Morris respectively, will be observed.

According to Morris, first the wheel was hove a-starboard and as the wheel was hove a-starboard the engine was slowed, then the captain blew his whistle twice, &c.

According to Walsh, he blew two whistles, then slowed, and then the wheel was put a-starboard, which fetched her round quick.

The statement of Morris that the whistle was blowed after the wheel had been put a-starboard, is according to the allegations in the answer of the claimant of the *Johnson*. (Fol. 39.)

Jonas Phillips, the engineer of the *Johnson*, on his direct, fol. 258: "The first I heard was the whistles, two whistles blown; then the bell rang to shut her off, to slow her; then the bell rang to stop her—she was stopped at once; I then took the starting bar and shipped it, and two bells rang to back her; I backed her at once; while I was backing her (I had made about two turns and a half back) something struck us."

On his cross, fol. 260:- "I don't know whether the whistle blew before she was shut off or after; I recollect the whistle blowing twice, but don't recollect whether she had been shut off."

Further, at fol. 261: "It might have been 20 seconds between the bell to slow and the bell to stop; the bell to back came almost immediately after the bell to stop; I think I had got two turns and a half back before the blow."

But whether the *Johnson's* whistle was blown just be-

fore or after the helm was put a-starboard, which last movement had the effect to fetch her bow into the eddy and bring the *Johnson*, with the ebb acting on her port quarter, round quick, into a direction across the line of direction of the *Burden* coming up and close in shore at a very short distance below—the interval of time and space between the two vessels was *too short* to admit of giving to it the effect of a signal, which the *Burden* could reasonably be expected to understand as intended on the *Johnson*—or to which the *Burden* would be obliged to conform by putting her helm a-starboard; and too short to justify any expectation upon which to act that the *Burden* would do so under the circumstances, when, according to the testimony of Cavin, from the *Saxe* (fol. 164), and as is obvious, the probable effect of the *Burden's* putting her helm a-starboard below the *Johnson*, but in close proximity, to pass outside would have been to turn the *Burden* with the boat on her port side round down the river, on her bow entering the ebb-tide, in a helpless condition, and in the way of the drift of the *Johnson* with that tide.

Under the circumstances, there is nothing in the fact of the *Johnson* blowing her whistle twice at the time she did, or other fact, to relieve her proceeding and persisting in an approach to the boat at the lower side of the lower pier of the Fulton ferry, across the bows of the *Burden*, as the *Burden* was coming up close in shore in the eddy tide, from the imputation of great recklessness.

> As bearing on the question of the supposed obligations of the *Burden* to put her helm a-starboard, see note to Regulations for Government of Pilots by the Board of Supervising Inspectors.

The pilot of the *Burden* heard the whistles from the *Johnson*, but he did not understand them (fol. 233), and the answer of the *Burden*, on the evidence, to the alle-

gation of the *Johnson* that the *Burden* should have put her helm a-starboard and passed outside, would seem to be a good one; that the expectation that she should do so was not reasonable or obligatory on the *Burden* under the circumstances of the relative position and bearing, and shortness of the interval of time and space after the intention of the *Johnson* to approach the boat to be taken in tow by her "head on" across the bow of the *Burden*, became apparent; and in view of the fact that the *Burden* could not, after the change of direction of the *Johnson*, have put her helm a-starboard and passed outside from below the *Johnson* without risk of being turned round with the boat on her port side as her head should strike the ebb tide, and of exposure in a helpless condition in the way of the probable drift of the *Johnson* with that tide.

It is obvious that the *Johnson*, if she had used due caution before placing herself in a position across the river, with her stern out in the ebb tide, and her bow in the eddy, as she did, and across the line of direction of the *Burden*, notwithstanding the near approach of the *Burden*, going up the river close in shore in the reflex tide, might, and could have stopped and drifted down with the tide, or made a course to go round under the stern of the *Burden*, and so round and up to the boat she wished to take out, or she might have avoided the collision by stopping and reversing in season, after danger of collision became apparent, if she had kept a proper look-out.

(2.) According to the weight of the evidence, the engine of the *Johnson*, after being first stopped, instead of being reversed before the collision, was started ahead.

Jonas Phillips, the engineer of the *Johnson*, testifies (at fols. 258, 261), that two bells were rung to back, and that he backed her at once, and

had made about two turns and a half back when something struck us.

Henry Smith, fireman on the *Johnson*, testifies that Phillips backed her. (Fol. 150.)

They thought so at the time, no doubt; but as the same motion of the bar will reverse the wheel or start it ahead according as the crank is on one side or the other of the centre of the shaft, it was easy to make the mistake which sometimes occurs on boats which have nothing but the "hook" to indicate the position of the crank in reference to the centre, and the man who undertakes to reverse is different from the one who stops the engine.

See testimony of E. N. Brown, 253.

The testimony of the captain and wheelsman of the *Johnson*, that her engine was reversed before the collision was from the parting of the stern line of the boat on his port side supposed to have been done before the collision by the suddenness of the backing.

The testimony of the following witnesses goes to show that the engine of the *Johnson* was started ahead, instead of being reversed, just before the collision.

Francis Weaver, fols. 71, 72.
George Carner, fols. 86, 90, 91, 93, 94.
Solomon H. Tisdale, 107, 110.
George Arnold, 219, 224, 228, 229.
Benedict J. Fisher, 239.
George E. Warner, 234.
Egbert N. Brown, 250, 251.
William Cavin, (from the *Saxe*,) 162, 166, 327, 328.

On the proof that the *Burden* was bearing away

somewhat towards the Brooklyn shore, just before and when the boats came together, a fact undisputed in the case, the extreme violence of the blow in a direction to cut through the side of the double-sided boat *McCord* and start her entire frame so as to bend in the port side of the boat and bend out the starboard side, as described by the witnesses, can not be accounted for except upon the supposition that the engine of the *Johnson* was worked ahead instead of back.

IX.—It is submitted that the *Johnson* was in fault.

1. In putting her helm a-starboard in the prosecution of her purpose to run to the boat at the lower side of the lower pier of the Fulton Ferry "right head on," and persisting in such attempt across the bows of the *Burden* after observing the near approach of the *Burden* close in shore coming up in the eddy or reflex tide.

   See the 13th Article of Act of Congress of April 29, 1864 (13 Statutes at Large, p. 501). The rule prescribed in this section of the act is merely declaratory of the pre-existing rule.

   The *Duke of Sussex*, 1 Wm. Rob, 275, in which the rule is recited and applied to a case occurring before the date of the Act of Congress and of this collision.

   The *Niagara*, 3 Blatch. C. C. R., 37.

2. She was in fault under the circumstances of the near approach of the *Burden* in not making a course to pass under the ~~*Johnson's*~~ stern, or in not stopping and backing in season to avoid the collision.

Burden's

3. In not having a proper look-out within the rule, which requires steamboats to have a look-out not actually engaged in the navigation of the vessel.

The *Genessee Chief*, 12 How., 463.
Chamberlain *vs.* Ward, 21 How., 541, 570.
Henry *vs.* Baltimore St. P. Co., 23 How., 287, 292.

X.—If it should be adjudged that no fault conducing to produce the collision is to be imputed to the *Burden* by reason of her proceeding close in on the Brooklyn side of the river instead of keeping out in the middle of the river as required by the New York State Act of April 12, 1848 (L. L. 1848, p. 450), referred to and applied in the case of the *Bay State*, 3 Blatch, C. C. R., 48, and in the case of the *E. C. Scranton*, Ib., 50; yet the *Burden* was in fault in not stopping and reversing her engine at once, on observing that the *Johnson*, at a point higher up and further out in the river, was changing her course, with her helm a-starboard, to cross ahead of the *Burden*.

1. George Arnold, the master of the *Burden*, on the look out (fols. 226, 227), testifies that the *Johnson* at the time she starboarded her helm and pointed in shore, was abreast of the Ferry slip (a place above the lower pier of the Ferry slip), the *Burden* being at that time below the pier, opposite to De Forrest's stores, as he guessed.

The master of the *Johnson* testifies that he was below Marston & Power's dock, and above the Ferry, when his helm was starboarded (fols. 213, 215.)

When the *Johnson began* to round to, Arnold first thought there was going to be a collision (fol. 219).

He means, doubtless, there was danger of a

3 — See Davies v Mann 10 Mees & Wels 546-548 -
Bridges v Grand Junction R. Co 3 M & W - 246 -
Sherman & Redfield on negligence Sec 36 p 35 & cases cited

collision from that movement. And yet the *Burden's* engine was not stopped until the vessels were in such close proximity that the only measure of prevention, in the judgment of her pilot, which was left, was the desperate one of starting ahead quick, immediatly after stopping her engine (pp. 227—30.)

2. There was nothing to excuse the omission on the part of the *Burden* to stop and reverse her engine when the *Johnson* began to round to, in the suggestion in the evidence of the master and pilot of the *Burden* (the master fols. 230—231, the pilot 240) that the effect of stopping and backing with a heavy boat, on her port side, would be to cant her head in toward the dock, or slue her across a little to the right.

3. The fault of the *Johnson* in rounding to in the attempt to approach the pier "head on" notwithstanding the near approach of the *Burden*, affords no excuse for the *Burden's* not using such means as were in her power to avoid the collision as the circumstances evidently required.

See the case of the *Hope*, 1 Wm. Rob., 157.

The *Itinerant*, 2 Wm Rob., 240.

There was time and room enough for the *Burden* to have stopped and reversed on observing the *Johnson* beginning to round to with helm a starboad; and there could be no misunderstanding what was intended by this movement of the *Johnson*.

4. It was on this omission on the part of the *Burden* that she was condemned in the District Court.

XI.—As to the joint liability of the steamboat and propeller—

The *New Philadelphia*, 1 Black, 62.
Cosgrove *vs.* The N. Y. and N. Hailroad Co., and the N. Y. and Harlem R. R. Co., 20 N. Y. Rep., 492.

In the first, Justice Wayne, in delivering the opinion of the Court, says:

"The rule of law is, that when a third party has sustained an injury to his property from the co-operating consequences of two causes, though the persons producing them may not be in intentional concert to occasion such a result, the injured person is entitled to compensation for his loss from either one or both of them, according to the circumstances of the incident.

In the case of Cosgrove against the two Railroad Companies, the liability of the two companies to a passenger for an injury resulting from the negligence of both, was held to be ~~void.~~ joint,

Ousting vs Frazer v Gen'l Ainch
21 How p 184

XII.—Exception below was taken to the allowance by the Commissioner to the libellant, McCord, of $375, being fifteen dollars a day for twenty-five days demurrage or detention of the boat *McCord* while undergoing repairs at Buffalo.

The item in schedule annexed to Commissioner's report, fol. 293.
Exception, fol. 297.

The collision was in December, 1863, in the harbor of New York, and the boat, after some temporary repairs at Erie basin, Brooklyn, was laid up there for the winter, and taken to Buffalo for repairs on the opening of navigation in the spring, and repaired there, because of better facilities for repairs, and less cost at Buffalo.

This item was allowed on proof of loss of use of the boat while undergoing repairs at Buffalo twenty-five days, and that she was worth, for charter, $15 to $20 a day (Irwin McCord, fols. 57, 58), and on further proof that the cost of repairing her in or about New York would have exceeded the cost at Buffalo thirty to forty per cent.. and that the difference between New York and Buffalo rates would have been over $500 in favor of Buffalo.

Notter, fol. 279.

It is submitted that it was properly allowed.

XIII.—The Decree of the Circuit Court affirming the Decree of the District Court against the steamboat *Johnson*, her engine, &c., and further ordering and adjudging as therein, should be affirmed, with costs.

And so much of the decree of the Circuit Court as exempts from fault and reverses the judgment of the District Court as against the propeller, William F. Burden, her engine, &c., and dismisses the libel as to her with costs against the libellants, should be reversed and a decree made, embracing the said propeller, *William F. Burden* and her claimants, in the same condemnation with the steamboat *Johnson*, her engine, &c., and her claimants.

C. Van Santvoord,
Of Counsel for
Libellants.

U. S. CIRCUIT COURT.

BEFORE JUDGE NELSON.

Appeal in Admiralty—Collision Between Towboats in East River.

IRWIN MCCORD AND THE WASHINGTON INSURANCE COMPANY.

vs.

THE STEAMBOAT SCRANTON, HER TACKLE, &C., AND PROPELLER WILLIAM F. BURDEN.

NELSON—C. J.

The collision in this case occurred on the East River, just below the Fulton Ferry on the Brooklyn side, on the 9th of December, 1863. The canal-boat *McCord*, heavily loaded with grain, was lashed to the port side of the propeller *Burden*, at the Atlantic dock, to be carried to Pier No. 44, up the river on the New York side. The tug left the dock with her tow about 11 o'clock, A. M., and passed up, hugging the Brooklyn shore in the eddy or reflex tide, the tide being in the river at that time about half ebb, strong. The *Scranton* had started from Corlear's Hook, on the New York side, with two empty coal boats, lashed to each side, and was coming down the river, and intending to cross over to the Fulton Ferry, to take up another boat lying below the lower slip of the ferry. It was near this point, somewhat lower down, that the collision took place, the *Scranton* striking nearly end on somewhat a slanting blow on the port side of the canal-boat while lashed to the *Burden*, breaking it in, and doing considerable damage.

The libel is filed by the owner of the canal-boat and

of the wheat, or rather the Insurance Company, representing the cargo, against both vessels, the *Scranton* and *Burden*, charging them with negligence; and both vessels were condemned by the Court below. The case is here on appeal by both.

It is admitted by the captain of the *Scranton* that he did not see the *Burden* till his boat was opposite the coal dock of Marston & Powers, which is the first dock above the Fulton Ferry slips, and that the *Burden* was then about as far below the ferry-slips as the *Scranton* was above them. The two vessels were, of course, near each other, and approaching at a combined speed of about ten or eleven miles the hour—the *Scranton* seven miles, the *Burden* between three and four. While the two vessels were in this position and relation to each other, the *Scranton* made a movement to go in below the lower slip of the Fulton Ferry to take up the boat lying there by fastening a line to the boat and backing, so as to tow her out into the river. As is apparent, in order to accomplish this movement, it became necessary to cross the track of the *Burden* with her tow, which was but a few hundred yards below, and in a stage of the water in the river, half ebb, that could but endanger an immediate collision. The captain of the *Scranton*, as if aware that this movement was inexcusable under the circumstances, seeks to avoid the error, and at the same time turn it against the *Burden* by setting up that he gave notice to the latter that he intended to pass to the left by blowing two whistles. Our answer to this is that the *Scranton* starboarded her helm and sheered in towards the Brooklyn side across the track of the *Burden* before she blew her whistles. This is stated in the answer and testified to by Morris, the wheelsman, with whom the captain was at the time. The danger of a collision was incurred by this movement before the notice.

Another answer is, that the boats had approached each other too near to justify a call on the *Burden* to make the manœuvre, by starboarding her helm, to pass

on the left. She had to come out of the eddy into a head tide with a heavy tow on her port side, which required time and exposed her to danger from the near proximity of the *Scranton*.

A third answer is, that in the position of the two vessels the *Scranton* had no right to insist upon a departure from the settled rule of navigation, when two vessels are meeting in opposite directions, that each shall port their helms and pass to the right. In the present case it was the duty of the *Scranton* to have slowed or stopped till the *Burden* had passed her, or to have passed under her stern, instead of her bow, in order to get at the boat she was after. We think the better opinion is, also, that the *Scranton* was not in shore, but considerably out in the river, when she undertook by starboarding her helm to cross the track of the *Burden*, and under the circumstances was bound to keep out or pass on the right; and that it was gross error in navigation to make the movement she admits was made. The weight of the proofs is that the captain of the *Burden* did not hear the two whistles; and if he had, no time was given for the answer; as the change of course was taken by the *Scranton* before the whistles were blown. We think the *Burden* was justified, under the circumstances, in keeping her course, and adopted the only movement practicable for her at the time to avoid the collision, namely, to port her helm and slow. Even if she erred in the impending danger, it is not to be attributed as a fault, as the *Scranton* was responsible for the critical and perilous condition in which she was placed. The decree below is affirmed as to the *Scranton*, and reversed as to the *Burden*.

Supreme Court

OF THE

UNITED STATES.

THE STEAMBOAT "JOSEPH JOHNSON," OTHERWISE CALLED "THE SCRANTON," HER TACKLE, &C., FREDERICK A. POTTS, CLAIMANT,
Appellant.

vs.

IRWIN MCCORD AND THE WASHINGTON INSURANCE COMPANY;

and

IRWIN MCCORD AND THE WASHINGTON INSURANCE COMPANY,
Appellants,

vs.

THE PROPELLER "WILLIAM F. BURDEN," SILAS BETTS, *et al.*,
Claimants.

BRIEF AND POINTS ON BEHALF OF THE PROPELLER "WILLIAM F. BURDEN."

The "Burden," a small propellor tug, was towing up the East River from Atlantic Dock, the canal boat "Kate McCord," very heavily loaded with wheat, she being fastened to the larboard side of the "Burden." The tide was the middle of the ebb, running down very strong. In consequence of the shape of the land from Catharine Ferry to Atlantic Dock, there is a strong eddy tide which runs up along the Brooklyn shore to the upper side of the Fulton Ferry slip,

when the tide is running ebb, and tugs bound up seek that eddy tide for the double reason that they get the aid of the eddy tide instead of the opposition of the ebb tide, and they avoid vessels bound down, leaving to them the advantage of the ebb tide and the breadth of the river. This is the well-known and conceded condition of the navigation there. The "Burden," was, therefore, going slowly up in that eddy tide 100 to 150 feet from the Brooklyn piers, and when she had nearly reached the ferry slip she saw the "Scranton," a large side-wheel steamer, with an empty barge on each side, coming rapidly down the river, out towards the middle of the river just above the Fulton Ferry.

The "Scranton," when about opposite the upper part of the Fulton Ferry slip, starboarded her helm, and at a rapid rate swept in, in a curve toward the Brooklyn shore, with the purpose of running in under the bow of the "Burden" and picking up a boat lying on the lower side of the lower pier of the Fulton Ferry slip.

The "Burden" seeing the "Scranton" thus coming dangerously towards her, blew one whistle, indicating that she intended to keep to the right, and those on the "Scranton" say she blew two whistles, indicating that she was going to the left; but the men on the "Burden" did not hear the two whistles, and could not have done anything to prevent the collision, situated as she was, had they heard them. The result was that the "Scranton" ran directly into the "Kate McCord," and did her serious injury, and also injuring herself.

The owners of the "Kate McCord" libelled both boats, the "Scranton" and the "Burden," to recover her damage by the collision, alleging a joint or several negligence, and the owners of the "Scranton" libelled the "Burden" to recover her damage by the collision, alleging negligence of the "Burden" alone.

I.—There is no question as to the make of the land, and the state of the tide's ebb and eddy, and the consequent rule and practice of harbor navigation; and this rule and practice the "Burden" observed, and she was on a direct line from the Atlantic Basin to Pier 44 on the New-York side of the river.

II.—There is no question that the "Burden" kept along the Brooklyn shore, close along shore, say 150 feet from the ends of the piers, till the collision, just before the collision bearing a little towards the shore on a port helm. All the witnesses on both sides agree in this witnessing after getting out of the eddy, to go to Pier 44.

No more is there any question that the "Scranton's" purpose, unknown to us, was to go in and pick up a boat at the Fulton Ferry pier, lower side; that she was out in the river, and came on a rapid large curve right upon us, intending to pick up the boat under our bows in a space not more than 100 to 150 feet wide, in which were running two rapid and conflicting tides, a most hazardous and reckless undertaking, which nothing could justify, and nothing short of success would excuse.

Danger to us, to him, to both, two steamboats, three canal boats and barges, liable to get in great confusion by breaking of lines or other accident in those conflicting tides, ten chances to one all would go to destruction together.

III.—It is equally clear that any course other than that we took was full of danger to us, with a heavy boat

attached to our larboard side, and that large boat the "Scranton," coming at us in such an uncertain curve—uncertain, for no one can tell where a curve will end whose radius is unknown—nothing is more uncertain than the direction and end of such a curve. It is equally clear that the "Scranton" could go under our stern and pick up her canal boat without the slightest peril to herself or to us, without a loss of more than fifteen seconds of time. The "Scranton" was going, say 7 knots, and the "Burden," say three, a united velocity of 10 knots a mile in 6 minutes, 880 feet in a minute, 220 feet in 15 seconds. From the time the vessels first saw each other was not more two minutes, or 1,760 feet.

IV.—That our purpose to hug the shore and keep in the eddy tide was evident, not only from our actual course, but from the necessities of navigation, and was actually known to the "Scranton." Their witnesses testify that they observed our keeping our helm aport and going to the right all the while to the last moment, while the purpose of the "Scranton" was concealed from us. We could not divine her purpose, on such a curve the difference being little between going under our bows and our stern, and her preference for going under our bows could never have been imagined by any discreet navigator.

A chart was introduced in evidence by the counsel for the "Scranton," on which the witnesses on both sides marked the course of the vessels. That chart thus marked was considered by the counsel of the "Burden" as fully establishing their views of the

case. The counsel for the "Scranton," however, do not produce it on the argument, and we are compelled to rely upon the memory of the Court as to its contents.

V.—The fallacy in the argument on the part of the "Scranton," is its assuming the two boats were going at the same speed, and that the "Burden" knew, from the direction and the whistle of the "Scranton," that she was going to pick up the canal boat at Fulton Ferry; whereas, the speed of the "Scranton" was double, and it was impossible to tell when or where her curve would strike shore, or where she was bound; and, it could not be supposed that a sane man would take the risk of rushing across our bows to take out a boat one hundred or one hundred and fifty feet ahead of us. The whistle of the "Scranton" was wholly immaterial at so *late a period.* Nothing could be done by us in fifteen seconds, encumbered as we were. We were *in extremis.*

The pretence that the "Scranton" had stern way on her at the time of the collision, when we consider the forward force of her blow, does not deserve serious answer.

VI.—It is claimed, on behalf of the "Scranton," that she had the right to cross the bows of the "Burden," because she wanted to come to the dock. But this is not so on general principles. A vessel which tries to cross another's bow, must take the risk of her

manœuvre. Moreover, such a cause was in direct contradiction to the rules of navigation.

Rule 1 provides that "when steamers meet, head and head, *it shall be the duty of each to pass to the right*, or on the larboard side of the other."

This was the clear duty of both these vessels when first seen by each other, another duty the "Scranton" refused to perform, and sheered rapidly to the left, and thus occasioned the collision.

What are the cases when steamers may take a contrary course? They are two.

1. When "the course of each steamer is so far on the starboard of the other" as not to be head and head.

But these vessels were, by the testimony of all the witnesses, not on the starboard at all, but on the larboard.

2. "If the vessels are approaching in such a manner that passing to the right is unsafe or contrary to rule."

But it is not pretended even by the "Scranton" that going to the right would have been "unsafe or contrary to rule." It was contrary to her convenience perhaps, and the fact that her pilot made that convenience superior to the rule is what caused the collision.

It must be borne in mind that the eddy was setting her up, the tide was setting the "Scranton" down on her, and the effect of reversing her engine would have been as the libellant says, to cast her head in shore, and to cause her to have stern way which would have brought her *broadside on* upon the "Scranton" with no possible means of escape.

Clearly her evident course was to keep on at full speed, in hopes by the combined action of her own power with the eddy assisting her, and that of the

"Scranton" assisted by the tide to pass each other before crossing the point where their courses crossed.

The Act of Congress cited does not of course require that steamboats approaching shall slacken speed when that slackening will increase the chance of collision.

VII.—But even let us assume that the pilot of the "Scranton" thought that passing to the right was contrary to rule, still his course of action was wrong on his own showing. He says he blew two whistles and at once put his helm to starboard. He does not pretend that he waited for any answering signal before changing his course. But this is contrary to the whole spirit of the rule, which is that vessels shall not undertake to pass each other *till both are agreed* as to the course each will pursue.

It was not "the right of the pilot to suppose he was understood," and to act on that supposition.

No vessel has the right to arrogate to herself the sole right of determining the course to be pursued.

If the "Scranton" had waited for a reply from the "Burden," before starboarding her wheel, there would have been no collision.

Especially is a vessel bound to wait for an answering signal before changing her course, when that change of course, is to carry her across the bows of the approaching vessel.

If the "Scranton" justified this movement of hers because she was so far off, we answer that she took the risk of not being far enough off to get by the "Burden's" bows, and the fact that they struck proves that she was not far enough off to allow her to attempt such a move-

ment. Having attempted it when she had not room enough, she must answer for her mistake.

VIII.—It is clear, upon the evidence, that the engine of the "Scranton" was not reversed at all.

It is no doubt true that her pilot intended to reverse it; but it is clearly proved that by some error of the engineer, it was started ahead instead of astern.

No one claims to have seen the wheels going back, or the connecting-rod working backwards. The engineers say the engine was backing, but it is easy to see that they might be mistaken about it, because, whether going back or forwards, it goes up and down in the same way in the engine-room, and the other witnesses only *argue* that the boat was backing from the breaking of the lines, while the lines were already, in fact, broken by the force of the collision. One turn or two back, which is all they claim to have given her engine, could not have broken two-inch lines, while the collision would naturally break them.

But, on the other hand, we have the testimony of Cavan, the Captain of the steamboat "Saxe;" Arnold, the Captain of the "Burden;" Warner, the deck-hand, Weaver and Carver were on board the "Kate McCord;" all of whom again testifying that the engine of the "Scranton" was working ahead and not back at the time of the collision, and that they saw it. Cavan, Weaver and Carver were entirely unprejudiced witnesses, as between the two steamboats; and Cavan and Arnold both spoke to those about them *at the time* about the "Scranton's" going ahead instead of backing.

This evidence of five men, three of them disinterested and two of whom spoke of it at the time, testifying to what they saw with their own eyes, is immeasurably stronger than the arguments of any number of witnesses, not one of whom saw the wheels or the connecting rod.

The testimony is easily reconciled by supposing that after the engine of the "Scranton" was stopped, when the order came to back, her engineer inadvertently moved the piston down instead of up, or the contrary; a mistake which might very easily happen, as shown in Mr. Van Santvoord's brief.

But this mistake was none the less a fatal one. It sent the "Scranton" and her barges forward upon the strong sides of the canal boat, with such force that it crushed them in like an egg-shell; while if she had backed, she would either have avoided the collision entirely, or at least have averted its ruinous consequences.

The idea that the collision was caused by the "Burden" and the canal boat "swinging sideways with the eddy tide against the stern of the 'Scranton,'" is absurd. The eddy tide does not go out from the piers, but along them, &c. That the "Burden" should have been able to carry the canal boat *out sideways* across the tide, upon the bows of the innocent "Scranton," which was backing rapidly away with such force as to crush the sides of that strong boat completely in, would have been the most astonishing feat of navigation ever performed.

The "Scranton" was never near the piers. She was never inside of the "Burden's" line of course, and never did cross the "Burden's" bow at all; and if she ever had got into the position described on that map, it

was gross negligence for her to stop, as she claims to have done. If she ever was in that position she should have kept right on, and there could have been no collision. But whether she went backwards or forwards, by no possibility could she ever from that position have struck the canal boat's side.

IX.—It is, however, said, that the "Burden" should have *reversed her engine.* But when, and why?

When she just saw the "Scranton" far out towards the middle of the river, borne down on the tide, there certainly was no occasion to stop and back. When she first saw the "Scranton" turning towards the Brooklyn shore, it was not her duty to stop and back, but to blow her whistle as she did; and, hearing no reply, it was her duty to keep on to the right as she did. She had but 15 seconds left. When she saw the "Scranton" sheering rapidly in towards the Brooklyn shore on a curve, regardless of her whistle, it was within 150 feet of the collision. She had only time to stop her engine. She had not time to stop her headway, much less to back, and if she could have got sternway, she would have been quite as likely to back into the way of the "Scranton" as out of it—the "Scranton" coming rapidly forward on a curve, and subject to the conflicting force of the contrary tides in which she had no right to be under the circumstances; "coming not exactly head towards us, but coming a kind of an angle round." (Fol. 250.) Under such circumstances, no vessel in danger can tell what to do. She is *in extremis*, and is not justly held responsible

for the struggles and embarrassments of her danger and alarm. *Vide.* pages 211 to 220. (Testimony of Captain of "Burden," being on the lookout, the best witness.)

X.—But it is now said the tug must be condemned because she was in the eddy of the Brooklyn shore, and not in the middle of the river, as required by the Statute of New-York. It is a sufficient answer that this is not set up in the libel, nor in the proofs as a negligence or ground of condemnation.

The Statute is as follows:

Session Laws of 1848, chap. 321, page .

SECTION 1. "All the steamboats passing up and down the East River, between the Battery, at the southern extremity of the City of New-York and Blackwell s Island shall be navigated as near as possible in the centre of the river, except in going into or out of the usual berth or loading place of such steamboat, and shall not be propelled at a greater rate of speed than ten miles an hour."

SEC. 2. "The Master, Pilot or Engineer of any steamboat violating either of the provisions of the foregoing section, shall be deemed guilty of a misdemeanor; and in addition thereto the Master, Pilot, and Engineer of such steamboat, shall respectively be liable to the penalty provided in Section 9, title 10, Chapter 20, of the first part of the Revised Statutes, to be sued for and applied as therein directed."

The punishment for a misdemeanor is as follows:

SEC. 46 (40) "Every person who shall be convicted of any misdemeanor, the punishment of which is not prescribed in this or some other statute, shall be punished by imprisonment in a County Jail not exceeding one year, or by fine not exceeding $250, or by both such fine and imprisonment."

2 Rev. Stat., 69, Sec. 40.

SECTION 9 is as follows:

Rev. Stat. Tit. 10, *Chap.* 20, *Part I.*

SEC. 9 "Every master of any steamboat who shall violate either of the preceding eight sections, shall for every such offence forfeit the sum of $250, to be sued for in the name of the People by the District Attorney of any county bordering on the waters on which the offence shall have been committed, to whom notice shall first be given of the commission of such offence. The penalty when recovered, shall be paid into the County Treasury of the county for which such District Attorney shall have been appointed, for the use of the poor of the county, except that the Court in which the recovery shall be had, may order such portion thereof not exceeding twenty-five dollars, as it shall deem just, to be paid to the District Attorney by whom the suit shall have been presented, as a compensation for his services and expenses beyond the taxable costs to be recovered by him."

The Statute imposes upon the offender two penalties:

1st. Indictment, trial, fine, and imprisonment, for a misdemeanor.

2d. A pecuniary penalty of $250 and costs, to be secured by the State by a trial on pleadings in an action of debt.

To these it is now proposed to add a pecuniary penalty of $9,000, to be imposed with indictment, declaration, or complaint or trial.

In the case of

this Court held that they would not thus, by way of accumulation in a civil suit between parties, add an enormous penalty to that of the State law.

But the State has no power to pass such a law. Nothing less than the sovereign power can regulate commerce with foreign countries, or between the several States. A State has no power to deny to vessels on the sea the choice of the safe modes and places of navigation. All the waters of the New-York Archipelago, extending from Montauk, off Rhode Island, to Sandy Hook, in Jersey, and embracing the shores and many maritime cities of Rhode Island, Connecticut, New-York and New Jersey, are the sea, and this particular river, the East River, called a river only because of its restless tidal current, is the maritime highway of all the steam commerce, and much of that by sailing vessels for all the Eastern States which seeks the port of New-York. The State cannot deny to those vessels the right to seek the safe navigation of the eddies which are made by the crooked shores and rapid currents. Apply it to Hell Gate. Can the State make it

the duty of vessels to take a course through the most dangerous rocks and whirlpools of that crooked and dangerous strait?

The Statute does not apply to tugs about the harbor.

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